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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 16.12.2019*

\+ **MAC.APP. 422/2019 & CM APPL. 53841/2019**

NAFEESA & ORS ..... Appellants

Through: Mr. Sunil Kumar, Advocate.
Mr. Pankaj Gupta, Advocate.
(*Amicus Curiae*)

versus

KARAN SINGH & ORS (NATIONAL INSURANCE CO. LTD) ..... Respondents

Through: Mr. Manoj Bhandari, Advocate for Insurance Company.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 14906/2019 (for delay)

1. This application seeks condonation of delay in filing of the appeal.

2. For the reasons mentioned in the application, the delay in filing the appeal is condoned.

3. The application stands disposed-off.

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4. This appeal impugns the award of compensation dated 04.10.2018 passed by the learned MACT in MACP No. 22/16, which has computed compensation towards 'loss of dependency' on the basis of minimum wages applicable to an unskilled worker. It was the case of the claimants that the deceased was running a factory of moulding, welding and manufacturing of

steel and iron goods and was earning roughly Rs. 50,000/- per month. He was running a business in the name and style of M/s All Metal Technique Enterprises. The claimants had filed ITRs of the deceased of three years immediately prior to his demise i.e. for Assessment Years- 2012-13, 2013-14 and 2014-15. The said documents were before the learned Tribunal but the same were not taken into consideration for adjudication of the claim. Copies of the said documents bearing the seal of the learned Tribunal have been annexed to the appeal. They are not only ITRs but details of accounts audited by Mr. Hari Om Sharma, Chartered Accountant. The identity of Mr. Mohd. Harun s/o Mr. Sabbeer is evident, not in doubt and stands established. ITR for AY-2012-13 shows the income of the deceased as Rs. 2,27,702/- on which tax of Rs. 550/- was paid; ITR V acknowledgement for AY-2013-14 shows his gross income as Rs. 2,92,458/- on which net tax of Rs. 911/- was paid and refund of 290/- is mentioned. For the subsequent Assessment Year i.e. AY-2014-15 Rs. 3,26,458/- was mentioned as the income, on which, after deductions no tax was payable.

5. Nevertheless, since the claimants had filed the relevant documents in support of their claim as clear evidence, that the deceased was earning monies through his business, it would be necessary and just to take the same into consideration. Therefore, the claim should be based on the earning of the immediately preceding year i.e. Rs. 3,26,458/- on which returns must have been filed in calendar year 2015 itself, provided the same is proved/verified through the authorities, for which the parties shall be given an opportunity to lead appropriate evidence before the learned Tribunal.

6. In view of the above, the impugned order is set aside. The case is remanded to the learned Tribunal for computation apropos 'loss of

dependency'. The parties shall appear before the learned Tribunal on 14.01.2020.

7. Since the accident occurred more than 4 years ago, the learned counsel for the parties shall request the learned Tribunal to endeavour to dispose-off the case, preferably within a period of three months from the date when the case is next listed before it. The learned counsel for the parties submit that they would assist the learned Tribunal on every such date when the case is so listed before it and will not take any adjournment whatsoever.

8. The learned counsel for the appellant submits that compensation towards 'loss of future prospects' @25% in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors* (2017) 16 SCC 680 has not been granted. It shall be so done.

9. Secondly, the learned counsel for the appellant submits that each of the claimants shall also be entitled to compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively, as per the dicta of the Supreme Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546. The same shall be granted to the claimants. Additionally, compensation towards 'Loss of Estate' and 'Funeral Expenses' shall also be paid to the claimants @ Rs. 15,000/- under each of the heads, in terms of the dicta of the Supreme Court in *Pranay Sethi* (supra).

10. Accordingly, the interim amount payable to the claimant shall be as under:-

S.No.	Particulars	Amount
1.	Loss of love and affection [Rs. 50,000/- x 6 (claimants)]	Rs. 3,00,000/-

2.	Loss of consortium [Rs.40,000/-x 6 (claimants)]	Rs. 2,40,000/-
3.	Loss of estate	Rs. 15,000/-
4.	Funeral expenses	Rs. 15,000/-
TOTAL		Rs. 5,70,000/-

11. Let the aforesaid amount, alongwith interest @ 9% from the date of the filing of the claim petition till its realization, be deposited before the learned Tribunal by the insurer, within three weeks from the date of receipt of copy of this order, to be released to the beneficiaries of the Award in terms of the scheme of disbursement specified therein.

12. The appeal stands disposed-off in the above terms.

13. LCR be returned.

14. The Court records its appreciation of the assistance rendered by Mr. Pankaj Gupta, the learned *Amicus Curiae*.

NAJMI WAZIRI, J

DECEMBER 16, 2019

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