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

% *Decided on: 22.10.2019*

+ MAC.APP. 423/2019 & CM APPL. 14910/2019

IFFCO TOKIO GENERAL INSURANCE CO LTD Appellant

versus

SUNNY GARG & ORS

..... Respondents

+ MAC.APP. 677/2019, CM APPL. 31774/2019, CM APPL. 31775/2019 & CM APPL. 41790/2019

SUNNY GARG & ORS

..... Appellants

versus

VIJAY SHARMA & ORS (IFFCO TOKIO GENERAL
INSURANCE COMPANY LTD)

..... Respondents

Through: Mr. A.K. Soni and Mr. Pavan Kumar,
Advocates for Insurance Company.
Mr. Sunil Kumar, Advocate for
appellant in MAC. APP. 677/2019
and for claimant in MAC. APP.
423/2019.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. These appeals impugn the award of compensation dated 04.02.2019 passed by the learned MACT in MACP No. 290/2017, on the ground that Rs. 2,50,000 was granted to claimant no. 2/present respondent no. 2 on account of his mother passing away. Respondent no. 2 admittedly suffers

from a mental disability and is otherwise completely bed-ridden because of a congenital disease. He was represented before the Tribunal through his father/his natural guardian because he was legally not in a position to represent himself; his condition is perhaps lesser than that of a minor child. His mother was nearly 53 years of age when her life snuffed out in the unfortunate motor vehicular accident; she was his sole care-giver. He has suffered not only a 'loss of parental consortium' and of her 'love and affection' but essentially of a care-giver who was familiar with his special needs.

2. The learned counsel for the appellant/insurer contends that there is no provision in law for making a special consideration for such a person in granting compensation of the nature that the impugned order has awarded. He refers to the dicta of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.***, (2017) 16 SCC 680, which has held that compensation would be granted for 'loss of dependency' i.e. pecuniary loss to funeral expenses, 'loss of estate', 'loss of consortium' and medical expenses, etc.

3. The Court would note that in subsequent judgments, the Supreme Court has granted non-pecuniary compensation towards 'loss of love and affection' as well. In cases of children or in cases of minor, the 'loss of love and affection' has to be considered for loss of care and guidance as well. Claimant no. 2 is no better than a minor; his circumstance is peculiar inasmuch as he cannot take care of himself in any manner whatsoever because of his congenital mental incapacity. It is not in dispute that the consideration of a peculiarity of this nature, was not an issue before the Supreme Court in ***Pranay Sethi (supra)***. The requirement under section 166

of the Motor Vehicles Act, 1988 is the assessment of just compensation. What will be just compensation will depend from the facts and circumstances of each case albeit there is a set formula and identified heads under which calculation has to be made for the assessment.

4. In the present case, the circumstances are unique. For a person who is over 18 years of age, but mentally retarded and physically 100% disabled, the care by his mother would fall into a separate category. He would have required and would require in future a person who could take care of him round the clock. Therefore, for the impugned order to have granted him compensation through one-time lumpsum amount for the loss of care on account of the unfortunate demise of his mother is justified.

5. The appellant further contends that deduction ought to have been 50% of the loss of earning of the deceased because she was survived by two major sons and her husband, one of whom would be treated separately for his psychological and physical disablement but the other son was 27 years of age and her husband was 57 years of age and they would be presumed to be not dependent upon her.

6. At this stage, Mr. A.K. Soni, the learned counsel for the appellant submits that nowhere in the evidence has the husband been able to show that he was dependent upon his deceased wife's earnings. In his evidence, the husband deposed that he had suffered a heart attack but no documentary proof was provided in this regard. Nevertheless, he stated that he could provide the same. Furthermore, he had stated that before his wife's death, day-to-day expenses were borne by her. He also stated that he received an amount from his wife's insurance policy but he had not filed any details in this regard. The claimants have filed an appeal being MAC. APP. No.

677/2019 seeking enhancement of the compensation amount. Their counsel seeks to bring on record the said documents alongwith ITRs. Photocopies of the ITRs have been filed in the said appeal. Insofar as the dependency of the husband is concerned, who was 57 years of age at the time of the filing of the Claim Petition, the same has not been established by way of any documentary evidence. The claimants seek an opportunity to establish the same. Thus far the claimants' evidence in this regard has not been shaken.

7. For reappraisal of the issue of dependency of the husband and for computation of 'loss of dependency', as may be, the case is remanded to the learned Tribunal before which ITRs and the other relevant documents in support of the business of the deceased, such as challans issued by the Municipal Authorities, etc. shall be placed. The husband would also be granted an opportunity to prove that he had suffered a heart attack and/or his financial dependency on his deceased wife. The parties shall be granted an opportunity to lead their evidence. In the circumstances, the impugned order is set aside to the extent that the husband would not be considered as a dependent. Thus far, only the son who is suffering from mental illness would be considered as a dependent. Be that as it may, since the younger son of the deceased namely Hunny Garg is an accepted case of dependency, an amount of Rs. 8 lacs shall be retained for his benefit. Of the said amount, Rs. 1 lac shall be released to the father right away, to meet exigencies.

8. At this stage, the Court would note that the non-pecuniary compensation comprising only Rs. 40,000/- towards 'loss of consortium' is erroneous because in terms of *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546, each of the claimants are entitled to compensation towards 'loss of consortium' be it

‘filial’ or ‘spousal’ @ Rs. 40,000/- as well as for ‘loss of love and affection’ @ Rs. 50,000/-. The same is granted to the claimants. Accordingly, the enhanced amount is as under:

S. No.	Particulars	Amount
1.	Loss of love and affection [(Rs.50,000x3 (claimants))]	Rs.1,50,000/-
2.	Loss of consortium [(Rs.40,000x3 (claimants) less Rs.40,000/- (already awarded)]	Rs.80,000/-
	Total	Rs.2,30,000/-

9. The enhanced amount, alongwith interest accrued thereon from the date of filing of the claim petition till realization, shall paid to the beneficiaries of the award in terms of the scheme of disbursement specified therein within three weeks of receipt of copy of this order.

10. The parties shall appear before the learned Tribunal on 13.12.2019 for adjudication in terms of the remand outlined hereinabove. Since the case pertains to an accident which happened in the year 2017, the learned counsel for the claimants request that the learned Tribunal be directed to dispose-off the case as early as possible. The Court is confident that when such a request is made to the learned Tribunal, the same will be duly accommodated.

11. The entire amount paid by the insurance company shall be kept in an interest bearing FDR except for Rs. 1 lac, disbursement as mentioned hereinabove.

12. The statutory amount, alongwith interest accrued thereon, be returned to the appellant.

13. The appeals are disposed-off in the above terms.

NAJMI WAZIRI, J

OCTOBER 22, 2019

AB/RW

