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

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Decided on: 03.09.2019

+ MAC.APP. 149/2018

SARLA & ORS

..... Appellants

Through: Mr. Shekhar Aggarwal, Advocate

versus

SH B K MOTI & ORS (TATA AIG GEN INSURANCE CO. LTD)

..... Respondents

Through: Mr. Rudra Kahlon and Ms. Vandana
Kahlon, Advocates

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 28.10.2017 on the ground that although seven claimants were arrayed in the Claim Petition i.e. the widow and four children and the parents of the deceased, only six were considered as dependents therefore, in terms of *National Insurance Co. Ltd. vs. Pranay Sethi*, (2017) 16 SCC 680 the deduction ought to have been 1/5th of the earnings of the deceased instead of 1/4th. However, learned counsel for the respondents refers to the decision of the Supreme Court in *Sarla Verma vs. Delhi Transport Corporation* (2009) 6 SCC 121 which has been referred in *Pranay Sethi (Supra)* and still holds the field, that unless there is evidence to the contrary the father will be presumed to be not

dependent upon his son. The mother of the deceased had passed away during the pendency of the claim petition.

2. The Court is of the view that in circumstances, deduction of only 1/4th was rightly made from the earnings. The enhancement however, is sought on account of non-grant of compensation on the basis of the income of the deceased i.e. Rs. 18,000/- per month, after adding 50% thereon towards: (i) loss of future prospect, (ii) inflation in the cost of living, (iii) after applying the multiplier of 16 and deducting only 1/5th towards personal expenses. The impugned award has granted the following compensation:

Sl No.	Name of Heads	Compensation
1.	Loss of dependency/ contribution to the family [7486x12x16x75/100]	Rs.10,77,984/-
2.	Loss of consortium	Rs. 1,00,000/-
3.	Loss of love and affection	Rs. 1,50,000/-
4.	Loss of estate	Rs. 50,000/-
5.	Funeral expenses	Rs. 50,000/-
Total		Rs. 14,27,984/-

3. It is contended that the compensation is to be granted for “loss of consortium” and “loss of love and affection” to each of the claimants. In terms of dicta of the Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.* 2018 SCC OnLine SC 1546,

compensation towards “loss of consortium”, be it spousal consortium or parental consortium or filial consortium, etc. would be payable to each of the claimants @ Rs.40,000/-. The same judgment also granted compensation for “loss of love and affection” @ Rs.50,000/- to each of the claimant. The Court agrees that the same emoluments ought to be and are hereby awarded to each of the claimants. For “loss of estate” and “funeral expenses”, the impugned order has awarded Rs.50,000/-, the same shall be reduced to Rs.15,000/- for each head in terms of *Pranay Sethi (Supra)*.

4. The Court would further note that the deceased was 35 years of age at the time of the accident and his loss of earning was computed on the basis of minimum wage payable to an unskilled worker i.e. Rs. 89,832 annually. An addition of 40% ought to have been made on the same towards compensation for “loss of future prospects” in terms of *Pranay Sethi (supra)*. It is so granted.

5. Accordingly, the total payable amount would be as under:

S.No.	Particulars	Amount
1.	Loss of Dependency Rs. 7,486/- (minimum wage) x 12 (months) x 16 (multiplier) x 75/100 (1/4 deduction towards personal expenses) x 140/100 (loss of future prospects)	Rs. 15,09,178/-
2.	Loss of love and affection Rs. 50,000/- x 6	Rs. 3,00,000 /-

	(claimants)	
3.	Loss of consortium Rs. 40,000/- x 6 (claimants)	Rs. 2,40,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
TOTAL		Rs. 20,79,178/-

6. Therefore, the total amount payable to the claimants shall be Rs. 20,79,178/-. Let the enhanced amount of Rs. 6,51,194/- alongwith interest @ 9% from the date of the filing of the petition till its realisation be deposited before the learned Tribunal within three weeks from 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 in the award.

7. The appeal stands disposed off, in the above terms.

8. Let a copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J

SEPTEMBER 03, 2019

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