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

% *Decided on: 27.08.2019*

\+ MAC.APP. 747/2019, CAV 841/2019 & CM APPL. 37379/2019

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni and Mr. Pavan Kumar, Advocates.

versus

HARPREET KAUR & ORS ..... Respondents

Through: Mr. Yatendra Kr. Sharma and Mr. Sachin Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CAV 841/2019

1. Since the learned counsel named above enters appearance for the caveator, the caveat stands discharged.

2. The application stands disposed-off.

MAC.APP. 747/2019 & CM APPL. 37379/2019

3. This appeal impugns the award of compensation on the ground that there is apparent error in the calculation of compensation.

4. The learned MACT had taken the monthly income of the deceased at Rs. 1,00,000/- against a claim of Rs. 2,00,000/-. It had taken into consideration the passbooks, other data and evidence brought on record, including the fact that there were two other employees to whom Rs. 8,000/- and Rs. 12,000/- were being paid for providing assistance in the running of his pharmaceutical shop. The deceased was bearing all the expenses of his

family which the impugned order has taken to be around Rs. 50,000/- per month. After deducting Rs. 20,000/- from Rs. 1 lac the cash in hand would be Rs. 80,000/- from which a further deduction of 1/4th will have to be made towards personal expenses of the deceased. In effect, the 'loss of dependency' would be Rs. 60,000/- per month. Therefore, the 'loss of dependency' would be calculated as Rs.60,000/-x12x14=Rs.1,00,80,000/-. Since, the deceased was self-employed and aged about 40-50 years, therefore, compensation towards 'loss of future prospects' would be 25% and not 30% as granted in the impugned award in terms of dicta of Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi & Ors.*** (2017) 16 SCC 680[1].

5. The learned counsel for the respondents/claimants concedes that indeed that is the correct calculation.

6. In view of the above, let a fresh calculation of the amounts payable to the claimants be furnished to them, by the insurer and the requisite amounts be deposited before the learned MACT for disbursement in terms of the scheme of disbursement specified in the Award.

7. The learned counsel for the respondents/claimants submits that due compensation ought to have been granted towards 'loss of consortium' and

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[1] *Para 61.(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

towards 'loss of love and affection' at the rate of Rs. 40,000/- and Rs. 50,000/- respectively for each claimant in terms of ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*** 2018 SCC OnLine SC 1546, but an amount of only Rs. 40,000/- has been awarded towards 'loss of love and affection'.

8. In the circumstances, each of the claimants shall be awarded Rs. 40,000/- and Rs. 50,000/- towards 'loss of consortium' and 'loss of love and affection' respectively.

9. Interest on the said amounts shall be paid in terms of the rate specified in the impugned award.

10. Income-tax deductions, as applicable, would be made by the insurer.

11. Statutory amount, alongwith interest accrued thereon, be refunded to the insurance company, within four weeks from the date of receipt of copy of this order.

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

13. 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

AUGUST 27, 2019

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