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

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Decided on: 13.11.2019

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MAC.APP. 130/2016

UNITED INDIA INSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Advocate.

versus

PARVEEN SHARMA & ORS Respondents
Through: Mr. Anshuman Bal, Advocate for R-1 to 9.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC. APP. 130/2016 & C.M. No.4522/2016 (for stay)

1. This appeal impugns the award of compensation dated 16.11.2015 passed by the learned MACT in MAC Petition No. 30/2013 on the ground that the quantum of compensation awarded, is erroneous.
2. On 08.02.2016, the appellant had contended that the learned Tribunal had wrongly assumed the notional income of the deceased as Rs.5,000/- per month, rather it should have been much lesser. The Court noted that the said contention was *ex facie* erroneous because the minimum wages were much higher at the relevant time, than the income assessed notionally by the learned Tribunal. In the circumstances, the Regional Manager of the appellant-insurance company had been called to the Court to explain and justify the same.
3. On 11.02.2016, the insurer had submitted that the argument urged on the previous date with regard to the notional income was wrongly made and

that the appeal only impugned the award on i) the quantum of non-pecuniary compensation awarded towards 'loss of love and affection' and (ii) for seeking recovery rights against the owner of the offending insured vehicle, on the ground that the Permit and Fitness Certificate were not produced, in spite of the appellant's notice under Order 12 Rule 8 of Code of Civil Procedure, 1908 (CPC).

4. Notice has been served upon the parties.

5. The Court would note that each of the claimants have been granted compensation towards 'loss of love and affection' @ Rs.50,000/-. The same is justified in view of the dicta of the Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram & Ors.***; 2018 SCC OnLine SC 1546. Additionally, the claimants were also entitled to compensation of Rs.40,000/- towards 'loss of consortium' in terms of the same judgment. Therefore, the total compensation payable towards 'loss of consortium' would be Rs. 3,10,000/- [Rs. 40,000/- x 9 (claimants) less Rs. 50,000/- (already awarded by the impugned order)]. The additional amount payable under this Head shall be Rs.3,10,000/-.

5. The Court would further note that Rs.50,000/- has been granted towards 'loss of expectancy of life'. This is an apparent error because when a person is injured, there is no 'loss of expectancy of life'. Accordingly, the said amount shall be deducted from the additional payable amount of Rs. 3,10,000/-, and the amount payable would thus be Rs. 2,60,000/-.

6. Apropos the right of recovery, the Court would note that despite service of notice and direction being given apropos production of requisite documents, i.e., Permit and Driving Licence, nothing was produced on record by the respondent, therefore, a presumption would accrue in favour of

the appellant, that the said insured vehicle was being driven in breach of policy conditions. In the circumstances, the appellant is granted right of recovery against the owner of the offending-insured vehicle.

7. The appeal is disposed off in the above terms.

8. Since the appellant has partially succeeded in the appeal, let the statutory amount, alongwith interest accrued thereon, be returned to it.

C.M. No.34074/2017 (cross-objections by R-1 to R-9)

9. Let the cross-objections be registered as a separate MAC. Appeal.

10. Issue notice. Mr. Pankaj Seth, the learned counsel for the insurance company accepts notice. At joint request, the cross-objection is taken up for disposal.

11. The appellant-claimants impugn the award of compensation on the ground that Rs. 5,000/- was taken as notional income to calculate the 'loss of dependency', which was less than the minimum wages applicable at the relevant time, i.e. Rs. 7,254/-. The learned counsel for the insurance company fairly concedes to the same. The same is modified to that extent.

12. The deceased was about 46 years of age at the time of the motor vehicular accident, therefore, she would be entitled to an addition of 25% towards 'loss of future prospects' in terms of dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*; (2017) 16 SCC 680. The same is granted. Accordingly, the amount payable towards 'loss of dependency' shall be Rs. 9,42,077/- [Rs. 7,254/- (minimum wages) x 12 (months) x 13 (multiplier) x 125/100 (loss of future prospects) x 66.6/100 (1/3rd deduction towards personal expenses)].

13. Therefore, the total amount payable by the insurance company shall

be Rs. 12,02,077/- (Rs. 2,60,000/- + Rs. 9,42,077/-). Let, the total awarded amount, alongwith interest at the same rate and from the same date as specified in the impugned order till its realization, be deposited before the learned Tribunal, 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.

14. The appeal stands disposed off in the above terms.

NOVEMBER 13, 2019
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NAJMI WAZIRI, J.



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