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

% *Decided on: 23.08.2019*

\+ **<u>MAC.APP. 751/2019</u>**

KAMLESH & ANR ..... Appellants

Through: Mr. Rajveev Sood, Advocate.

versus

RAHUL KUMAR & ORS (M/S NATIONAL INSURANCE CO LTD) ..... Respondents

Through: Mr. Shoumik Mazumdar, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>NAJMI WAZIRI, J. (Oral)</u>

<u>CM APPL. 37745/2019 & CM APPL. 37746/2019 (for delay)</u>

1. These applications seek condonation of delay in filing and re-filing of the appeal.

2. For the reasons mentioned in the applications, the delay is condoned. The appeal be taken on record.

3. The applications stand disposed-off.

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4. Issue notice. Mr. Shoumik Mazumdar, the learned counsel for respondent no. 3 accepts notice.

5. At joint request, the appeal is taken up for disposal.

6. This appeal seeks enhancement of the compensation awarded to the appellants. The facts of the case are that the deceased was pursuing an

under-graduate course i.e. he was in first year of B.Com degree course. In other words, he was a matriculate. He was of 17 years and 10 months, at the time of his demise. Insofar as he was a matriculate, minimum wages applicable to a person so qualified, would be applicable and his being a minor would not come in a way in computation of the Award, on the basis of the notified minimum wages. In ***Mira Devi & Anr. vs. Mohd. Khalil & Ors.*** MAC APP. No. 1129/2017 and MAC APP No. 174/2018, this Court in its decision dated 04.09.2018 has held as under:-

> "*10. Upon hearing and on perusal of impugned Awards, evidence on record and the decisions cited, I find that the Tribunal has erred in relying upon decision in Chetan Malhotra (supra) as the said case was of school going children, whereas in the instant case, deceased and Injured were working. Since their income is not proved on record, therefore, it has to be assessed on minimum wages payable to a matriculate as both of them were matriculates. Reliance placed by Insurer's counsel upon Supreme Court's decision in R.K. Malik (supra) is of no avail as the said decision pertained to school going children. Even if it is taken that deceased and injured were engaged in Distance Learning and were working also, still their income cannot be assessed on notional basis. In the considered opinion of this Court, the income of deceased and injured has to be assessed on minimum wages payable to a matriculate. The minimum wages payable to a matriculate at the relevant time was ₹9802/- per month. Since deceased was aged 17 years and 11 months, therefore, the applicable multiplier is of 18. In view of Supreme Court's Constitution Bench decision in National Insurance Company Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680, addition of 40% has to be made towards future prospects, whereas addition of ₹30,000/- is made under the non- pecuniary heads. In view thereof, compensation payable to legal heirs of deceased-Prateek Kumar is re-assessed as under: -*

₹9802/-p.m. X 12 X 18 X 50/100 X 140/100 + ₹30,000/- =₹15,12,062/-."

7. The same rationale and principle shall be applicable to the present case as well.

8. Furthermore, in terms of ***Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram & Ors.*** 2018 Scc Online Sc 1546, each of the claimants shall be entitled to compensation towards "loss of consortium" and "loss of love and affection" @ Rs. 40,000/- and @ Rs. 50,000/- each, respectively i.e. Rs. 40,000x2 + Rs. 50,000x2 = Rs. 1,80,000/-.

9. Apropos compensation towards "funeral expenses" and "loss of estate" @ Rs. 15,000/- each ought to have been and has been granted.

10. In view of the above, the amount payable to the appellant shall be Rs.11,154/-(the applicable minimum wage for a matriculate) x 12 (months) x18(multiplier)x50/100(50% deduction towards "personal expenses")x140 (40% towards loss of future prospect)/100+ 1,80,000/- +30,000/-(15,000x2)=Rs. 18,96,485/-

11. Let the enhanced amount be paid, alongwith interest @9% from the date of filing of the Award, to the beneficiaries of the Award, in terms of the scheme of disbursement as specified therein, within three weeks from the date of receipt of copy of this order.

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

NAJMI WAZIRI, J

AUGUST 23, 2019

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