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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 24.07.2019

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MAC.APP. 325/2018

SARASWATI & ORS

..... Appellants

Through: Mr. Ram Dayal Sahalia, Adv.

versus

MUSTARIF & ORS (NATIONAL INSURANCE
CO LTD)

..... Respondent

Through: Ms. Neerja Sachdeva, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal seeks enhancement of award of compensation dated 02.08.2017 passed in MACT No. 403/2017 on the ground that it is on the lesser side; that non-pecuniary damages towards loss of consortium and other grounds have not been awarded. It also seeks enhancement towards loss of future prospects in terms of the decision of the Supreme Court in *National Insurance Company vs Pranay Sethi 2017 ACJ 2700*. The total compensation awarded in the impugned order is as under:

S. no.	Description	Amount
1	Loss of Dependency	Rs. 11,32,200/-
2	Funeral Expenses	Rs. 25,000/-

3	Loss of Love & Affection	Rs. 1,00,000/-
4	Loss of Estate	Rs. 10,000/-
5	Loss of Consortium	Rs. 1,00,000/-
6	Medical Expenses	Rs. 1,20,000/-
	Total	Rs. 14,87,200/-

2. It is argued that the loss of dependency should be enhanced. It was established that the deceased was working with M/s Aqua Gaseous Controls (India) and was receiving a salary of Rs. 8,386/- per month. The claimants had also deposed that the deceased was getting an over-time of Rs. 2,000/- to 3,000/- per month. However, overtime not being the regular salary but dependent on exigencies, the monthly income of the deceased was taken at Rs. 8,386/- and 1/4th of it was deducted towards his personal expenses, as he was survived by three children, wife and mother. The deceased was 37 years of age i.e. under 40 years.

3. The deceased met with an accident on 28.11.2016 at about 7.25 a.m. and succumbed to his injuries on 01.12.2016. His employer M/s Aqua Gaseous Controls (India) had filed a statement to the effect that he was employed with them since December, 2015. Statement of account of Corporation Bank have also been filed by the said employer to the effect that the deceased was being paid a salary of Rs.8,386/-. In the aforesaid circumstances, his employment would be deemed to be a permanent employment. Accordingly, he would be entitled to 50% of loss of future prospects, after deducting 1/4th of the same towards his personal expenses.

4. Furthermore, the claimants would be entitled to loss of consortium and an additional amount for 'loss of love and affection' in terms of the dicta of the Supreme Court in *SLP No. 3192/2018 Magma General Insurance Co. Ltd. vs Nanu Ram @ Chuhru Ram & Ors.* decided on 18.09.2018 @ 40,000/- for each claimant. In terms of *Pranay Sethi (supra)* the amount towards; i) 'loss of estate' and ii) 'funeral expenses' are to be Rs. 15,000/- each whereas what has been awarded in the impugned award are Rs. 10,000/- and Rs. 25,000/- respectively. The same is now modified to Rs. 15,000/-, towards each of the two (i & ii) aforesaid non-pecuniary heads. The amount awarded towards 'loss of love and affection' at Rs. 1 lac for the four immediate family members of the deceased, is on the lesser side. The same is enhanced to Rs. 50,000/- each for dependants of the deceased, in terms of *Magma (supra)*.

5. Let the aforesaid amount be computed by the Insurance Company and paid to the claimants along with interest @ 9% per annum thereon from the date of filing of the claim. The computation shall be made in four weeks of receipt of this order and the amounts shall be deposited before the learned Tribunal, for disbursement in terms of the scheme specified in the impugned order.

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

NAJMI WAZIRI, J.

JULY 24, 2019

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