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

% *Decided on: 26.09.2019*

+ MAC.APP. 355/2018, CM APPL. 13956/2018 & CM APPL. 13957/2018

ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

LATA PUNJANI & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 30.11.2017 passed by the learned MACT in MACT No. 357165/16 & Suit No. 684/2011, on the ground that instead of 1/3rd deduction towards 'personal expenses', only 1/4th has been deducted by the learned Tribunal. It is the appellant's case that the parents had pre-deceased the award of compensation, therefore, only three dependants remained and in terms of *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the deduction should have been 1/3rd towards 'personal expenses'.

2. The aforesaid argument is untenable for the reason that at the time of filing of the claim petition, there were five dependents and their right to

claim dependency had already been placed before the learned Tribunal. Whatever is subsequently awarded to them would be a part of their estate to be shared by the surviving dependents and/or legal heirs. The pre-deceased parents would not make a difference to the substance of the claim or the number of persons who had filed the claim. Therefore, in view of the above, the said argument is rejected.

3. The next argument is that in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680, while granting compensation towards 'loss of future prospects', 40% ought to have granted instead of 50%. The deceased was 35 years of age, he was self-employed with a private company and was earning Rs. 7,500/- per month. He also had other sources of income and the same has been reflected in his ITRs. The learned Tribunal has dealt with the issue as under:-

“Addition towards Future Prospects:

- (i) *From the testimony of PW2 Lata Punjani, it is established that deceased was working with M/s Sidhi Vinayak Plastic Products Pvt. Ltd. From the ITRs, it has been established that his income from the salary has grown up from Rs. 53,600/- to Rs. 65,951/- in the assessment year 2005-2006, which shows that he got substantial increase in his salary. From this, it can safely be culled out that he was the permanent of the company. No doubt, petitioner failed to produce any employment certificate from M/s Sidhi Vinayak Plastic Products Pvt. Ltd., but this is not helpful to the respondents in any manner as from his ITR, it has been established that the deceased had regular income.*

- (ii) *From the passport (Ex. PW2/H), it is established that date of birth of the deceased was May 22, 1970. Since the accident had taken place on August 14, 2005, it means that he was 35 years, 2 months and 23 days old at the time of accident.*
- (iii) *Since deceased was below 40 years old at the time of his death, in view of the law laid down in Pranay Sethi case (supra), petitioners are entitled for 50% addition towards future prospects. Accordingly, a sum of Rs.32,976/- [50 % of Rs.65,951] is added in the income of the deceased Vijay Punjani. ”*

4. What emanates from the above is that the deceased would not be considered permanently employed and in terms of the dicta of the Supreme Court in ***Pranay Sethi (supra)***, para 59.4, the compensation towards ‘loss of future prospects’ would be @ 40% only. The award is modified to that extent.

5. The appellant is stated to have deposited the awarded amount after deduction of the amounts in terms of the above. The Court would note that one quantum of loss i.e. Rs. 40,000/- has been awarded towards ‘loss of consortium’. However, pursuant to the judgment of Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.***, 2018 SCC OnLine SC 1546, each of the claimants shall be entitled to compensation @ Rs. 50,000/- for ‘loss of love and affection’ and Rs. 40,000/- for compensation towards ‘loss of consortium’, be it spousal, filial or parental consortium. It is so granted.

6. Accordingly, the amount payable to the claimants is as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 65,951/- (annual income) x 140/100 (loss of future prospects@ 40%) x 16 (multiplier) x 75/100 (1/4 th deduction towards personal expenses)]	Rs. 11,07,977/-
2.	Loss of love and affection [Rs. 50,000/-x 5 (claimants)]	Rs. 2,50,000/-
3.	Loss of consortium [Rs. 40,000/-x 5 (claimants) less Rs. 40,000/- (already granted)]	Rs. 1,60,000/-
TOTAL		Rs. 15,17,977/-

7. The aforesaid amount shall be deposited by the appellant, alongwith interest @ 9% from the date of filing of the claim petition, before the learned Tribunal within three weeks of receipt of copy of this order, to be released to the beneficiary(ies) of the award in terms of the scheme of disbursement specified in the award.

8. Statutory amount, alongwith interest accrued thereon, be refunded to the appellant.

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

NAJMI WAZIRI, J

SEPTEMBER 26, 2019

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