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

% *Decided on: 07.11.2019*

\+ MAC.APP. 275/2016, CM APPL. 12294/2016 & CM APPL. 12296/2016

SHRI RAM GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. Sameer Nandwani, Advocate.

versus

SHAKUNTLA & ORS ..... Respondents
Through: Mr. Bhupesh Narula, Mr. Yogesh Narula and Ms. Rinku Narula, Advocates for R-1 to R-3.
Mr. N. K. Jauli and Mr. Rajiv Ranjan, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 02.12.2015 passed by the learned MACT in MACT Petition No.316/13/2014 on two grounds: i) that the rate of interest awarded on the compensation amount is on the higher side; ii) that the right of recovery was not granted in favour of the insurer, against the driver and owner of the offending insured vehicle.

2. The first contention of the appellant is correct i.e. instead of 10% interest should have been granted @ 9%, which has been consistently granted by Courts for the past half-a-decade. The learned counsel for the

respondent fairly agrees to the same. Accordingly, rate of interest is reduced to 9%.

3. Secondly, that grant of 50% towards loss of future prospects is erroneous and the same should be granted @ 40% in terms of dicta of the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors***, (2017) 16 SCC 680. The said argument is valid. Future prospect shall accordingly be awarded @ 40%.

4. Lastly, it is contended that the deduction towards personal expenses should have been carried out @ 50% of the earnings of the deceased in terms of ***Pranay Sethi*** **(supra)** since he was a bachelor and only his mother was dependent upon him.

5. On a query being put to learned counsel for the appellant whether the two married sisters of the deceased were earning and/or whether their father was alive, answer is that the brother was the only earning member and that the sisters were dependant on him for financial needs. In the circumstance, the mother and the two married sisters shall be considered as dependent upon the deceased. Therefore, there is no justification for deducting 50% instead of $1/3^{rd}$ towards personal expenses.

6. The Court would note that "loss of consortium" has been granted @ Rs.1,00,000/-. It is pertinent to note that all the claimants were deprived of the company of their deceased brother and son. Therefore, in terms of the dicta of the Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.***, 2018 SCC OnLine SC 1546, each of the claimants would be entitled to compensation towards "loss of

consortium" @ Rs.40,000/- each. In view, the same shall be payable @ Rs.1,20,000/- instead of just Rs.1,00,000/-.

7. Additionally, in terms of ***Magma*** **(supra)**, each of the claimant would also be entitled to compensation towards "loss of love and affection" @ Rs.50,000/-. The same is granted to the claimants. Loss of Estate and Future Expenses shall be payable to the respondent @ Rs.15,000/- under each head in terms of ***Pranay Sethi*** **(supra)**.

8. Accordingly, the total amount payable to the claimant shall be as under:

S. No.	Particulars	Amount
1.	Loss of Dependency [Rs. 7,020/-(minimum wage)x12(months)x18(multiplier)x140/100(future prospect)x66.66/100(1/3rd deduction towards personal expenses)	Rs. 14,15,090/-
2.	Loss of Love & Affection [Rs. 50,000x3(claimants)]	Rs. 1,50,000/-
3.	Loss of consortium [Rs. 40,000x3(claimants)]	Rs. 1,20,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
	Total	Rs. 17,15,090/-

9. The appellant seeks right of recovery against the owner of the offending vehicle because the license possessed by the driver at the time of

the motor accident was of Light Motor Vehicle (commercial). However, in view of the decision of the Supreme Court in ***Mukund Dewangan v. Oriental Ins. Co. Ltd.***, (2016) 4 SCC 298, insofar as the weight of the vehicle did not exceed 7500 kg, the driver would be deemed to have sufficient skill to drive the said motor vehicle. Therefore, the appellant seeking right of recovery on this ground is untenable and is accordingly rejected.

10. Let the aforesaid amount be deposited before the learned Tribunal within three weeks from the date of receipt of copy of this order, to be released the beneficiary (ies) of the award in terms of scheme of disbursement specified thereon. Excess amounts, if any, be returned to the appellant.

11. Since the appellant has partly succeeded in the appeal, the statutory amount, alongwith interest accrued thereon, be returned to the appellant.

12. The appeal is disposed off in above terms.

NAJMI WAZIRI, J

NOVEMBER 07, 2019
SSC