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

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Decided on: 17.09.2019

+ **MAC.APP. 375/2016**

NATIONAL INSURANCE CO LTD Appellant

Through: Ms. Shuchi Singh, Advocate.

versus

BHAGIRATH SINGH & ORS Respondents

Through: Mr. K.N. Bhargavan, Advocate for R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 4920/2019 (for early hearing)

1. This application seeks early hearing of the appeal. For the reasons mentioned in the application, it is allowed.

2. The application stands disposed-off.

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3. Issue notice.

4. The learned counsel named above accepts notice on behalf of the insurance company. The appeal is taken up for arguments.

5. This appeal when filed, impugned the award of compensation dated 11.01.2016 passed by the learned MACT in Petition No. 115/2014 on the ground that compensation towards 'loss of future prospects' had been

wrongly granted. The learned counsel for the appellant fairly states that in terms of dicta of Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680, the issue apropos 'loss of future prospects' has been settled. However, the impugned award has granted compensation towards 'loss of future prospects' at 50%, however, the same ought to have been 40% in terms of the aforementioned judgment. The learned counsel for the appellant argues that the compensation awarded, ought to have been calculated on the basis of minimum wages applicable at the relevant time, because the age of the deceased was 20 years at the time of accident and he was not in permanent employment. The learned counsel for the respondents fairly admits that compensation towards 'loss of future prospects' ought to be reduced from 50% to 40%. It is so ordered. The deceased was 20 years old, therefore the multiplier of 18 was rightly applied by the learned Tribunal.

6. The Court would note that the compensation towards 'loss of love and affection' has been awarded as Rs. 1,00,000/- whereas in terms of *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546, it should be Rs. 50,000/- for each of the claimants. Nevertheless, in terms of *Magma (Supra)* each of the claimants would be entitled to compensation for 'loss of love and affection' and 'loss of consortium' be it 'filial' or 'parental' or 'spousal' or 'fraternal' @ Rs. 50,000/- and Rs. 40,000/- respectively. The 'loss of dependency' has been limited in the impugned order only to the parents and it was rightly so done because the siblings were not shown to be dependent upon him. Nevertheless, the siblings and his claimants would be entitled to compensation for 'loss of love and affection'. After all, the deceased young

man was an integral part of his family and they were all cohabiting together. His sudden absence from the family would have deprived of his family members, especially the younger siblings of his love and affection and fraternal consortium.

7. In the circumstances, in view of *Magma (supra)* each of the claimants shall be awarded compensation towards 'loss of love and affection' at Rs. 50,000/- and for 'loss of consortium' at Rs. 40,000/-. Furthermore, in terms of *Pranay Sethi (supra)*, compensation for 'Loss of Estate and 'Funeral Expenses' the amount payable would be Rs. 15,000/- under each head.

8. Therefore, the amount payable by the insurer would be as under:

S.No.	Particulars	Amounts
1.	Loss of Dependency [Rs. 9,802/- (minimum wages) x 12 (months) x 18 (multiplier) x 140/100 (future prospects) x 50/100 (personal expenses)]	Rs. 14,82,062/-
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)]	Rs. 2,00,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
TOTAL		Rs. 19,62,062/-

9. The 'loss of dependency' will be limited to the parents, as held by the learned Tribunal. However, the amount towards 'loss of love and affection'

awarded to the siblings can be expended by the parents for the minor children's education and/or other needs.

10. The enhanced amount alongwith interest @ 9% p.a. from the date of filing of the claim petition till its realization, shall be deposited before the learned Tribunal by the appellant within three weeks 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.

11. The statutory amount alongwith interest accrued thereon, be refunded to the appellant.

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

NAJMI WAZIRI, J

SEPTEMBER 17, 2019

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