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

% *Decided on: 01.08.2019.*

\+ **MAC.APP. 450/2018 & CM No.19287/2018**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. R.K. Tripathi, Advocate.

Versus

SEEMA NAHATA & ORS ..... Respondents

Through: Mr. P.C. Dogra, Advocate for R-1 to R-3.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation on the ground that the learned Tribunal has taken the minimum wages applicable in Delhi, for computation of "loss of dependency". It is the appellant's case that PW-1, the widow of the deceased, had deposed that her husband was in a private job with M/s. Karunamai Creation in Kolkata and was earning an amount of Rs. 15,000/- per month. However, she was unable to bring on record any document to prove the said earning. The claimants have placed on record the statement of marks of Senior Secondary School Examination of the deceased proving that he had passed the examination. Accordingly, the minimum wages applicable to a matriculate in Delhi at the relevant

time was taken into consideration. However, the Court would note that it is nowhere stated that the deceased was working in Delhi, instead it has been clearly stated that he was working in Kolkata.

2. The Senior Secondary School Examination marksheet was obtained from Bikaner, apropos, the examination conducted in a school in Bikaner. His residential address is also not shown to be in Delhi. Indeed, the DAR shows that he was a resident of Bikaner, Rajasthan and even in the MLC, his address is mentioned as that of Bikaner.

3. In these circumstances, the adoption of the minimum wages applicable to a matriculate in Delhi is erroneous and is set aside. The rate applicable to a matriculate in Bikaner would be applicable, especially because there is nothing on record to show that he was working in Kolkata. The rate applicable for a matriculate in Bikaner at the relevant time was Rs. 5,746/-. Adopting the said figure, the amount payable towards "loss of dependency" would be Rs. 5,746x12x17x2/3 i.e. Rs. 7,81,456/-. This sum shall be payable alongwith the non-pecuniary heads at the rate of Rs. 50,000/- towards "loss of love and affection" and Rs. 15,000/- towards funeral expenses in terms of the dicta of the Supreme Court in ***Magma General Insurance Company Limited vs. Nanu Ram Alias Chauhan Ram & Other***, 2018 SCC OnLine SC 1546. Only Rs. 40,000/- has been granted towards "loss of consortium", though it does not specify whether it is towards "loss of filial consortium" or "parental consortium". The claimants i.e. the widow and the parents of the deceased, would each be entitled to consortium at the rate of Rs.

40,000/-, the widow towards "spousal consortium" and parents towards "filial consortium" as per ***Magma*** *(supra).*

4. Therefore, let a fresh computation of the compensation be made by the insurance company in terms of the above, within four weeks of receipt of this order.

5. The Court is informed that the entire amount awarded by the learned Tribunal stands deposited. However, if there is a shortfall in terms of the fresh computation, as directed hereinabove, the said deficit shall be filled-up by the insurance company within four weeks and the awarded amount shall be released to the beneficiaries of the award, in terms of the scheme of disbursement specified therein.

6. Excess amounts, if any, alongwith interest accrued thereon, shall be returned to the appellant alongwith the Rs. 25,000/- statutory deposit with interest accrued thereon.

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

NAJMI WAZIRI, J.

AUGUST 01, 2019
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