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

% *Decided on: 21.11.2019*

\+ MAC.APP. 697/2018 & CM No. 30139/2018

NATIONAL INSURANCE CO LTD ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

RAMA SHANKER & ORS ..... Respondents
Through: Mr. Anshuman Bal, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 17.05.2018 passed by the learned MACT in Suit No. 128/2009 on the ground that for a 3rd Semester B. Tech (Mechanical) student, who would have to complete another three years to get a Graduation degree, the learned Tribunal erred in considering the notional income at three times the minimum wages.

2. The learned counsel for the respondents submits that ordinarily 80% of the students at Swami Devi Dayal Institute of Engineering and Technology, Gole Pura, Barwala, Panchkula, Haryana, received campus placement. Therefore, the learned Tribunal was of the view that ordinarily a person so qualified, a B. Tech. Graduate would earn far more than an ordinary graduate. The learned Tribunal noted that since the deceased was pursuing B. Tech. from a not very reputed educational Institute, it was not

likely that he could get Rs. 20,000/- per month and he was only in the 3rd Semester of the 5 year course. Therefore, even if it were to be assumed that he did indeed get an employment @ Rs. 20,000/- per month it would only be in the year 2012-13 i.e. after completion of his B. Tech course. It is argued that therefore for the learned Tribunal to have assumed a monthly earning of Rs. 15,000/- in 2008-2009 was erroneous, as the same is on the higher side.

3. In ***Ganga Devi & Ors. vs. New India Assurance Co. Ltd. & Ors.,*** MAC APP. 359/2008, decided on 23.11.2009, while considering the case of a MBBS student who was doing internship and was to be awarded the MBBS degree course in a short time, the learned Tribunal had awarded compensation on the basis of the minimum wages applicable to a Graduate, the Court observed that although the deceased student was getting a stipend of Rs. 5,000/- per month at the time of his death, but he would have ultimately been entitled to a salary ranging between Rs. 16,000/- per month to Rs. 25,000/- per month, as a doctor. Therefore, average monthly income of the deceased was taken as Rs. 18,000/- and after adding 50% towards 'loss of future prospects', the compensation was enhanced. It is pertinent to note that the period of motor accident in the present case is roughly the same i.e. year 2009.

4. Likewise, in the case of ***Usha & Anr. vs. Pramjeet Singh & Anr,*** MAC APP. 369/2012, decided on 12.10.2012, the Court had taken into consideration the assessment of 'loss of dependency' of a 1st year B. Tech. Student. The potential income was taken as Rs. 15,000/- per month. The fatality occurred on 14.12.2008. The circumstances in the present case are identical. The Court held, *inter alia* as under:

> *"9. In the instant case, no evidence whatsoever was produced by the Appellants to prove educational performance of the deceased in the 10th standard and the 12th standard. The deceased did not get admission in any good college and that is why he took admission in a private B. Tech College by the name of MGM College of Engineering & Technology. Thus, taking into consideration the fact that the deceased was only a first year student and that he was pursuing engineering only from an ordinary college, I would take his potential income to be about Rs. 15,000/- per month; make a deduction of 50% towards personal and living expenses and apply the multiplier of 13 as per the age of the deceased's mother, the loss of dependency thus comes to Rs. 11,70,000 (15,000/-x1/2x12x13)."*

5. In view of the precedents fixing Rs. 15,000/- monthly earnings and the similar circumstance of the deceased B. Tech student in the present case, the Court is not persuaded to interfere with the computation of compensation towards 'loss of dependency'.

6. The Court would note that in terms of the dicta of Supreme Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.***, 2018 SCC OnLine SC 1546, each of the claimants would be entitled to compensation for 'loss of love and affection' and 'loss of consortium '@ Rs. 50,000/- and Rs. 40,000/-, respectively. The same is granted to them. Accordingly, the amount under these two heads would be Rs. 1,80,000/- [Rs. 50,000/- x 2 (claimants) = Rs. 1,00,000/- and Rs. 40,000/- x 2 (claimants) = Rs. 80,000/-]

7. Let the aforesaid amount of Rs. 1,80,000/- alongwith interest @9% from the date of the filing of the claim petition till its realization, be

deposited before the learned Tribunal, within three weeks from the date 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.

8. The monies shall be released directly into the bank account of the claimants which the learned Tribunal shall ensure are maintained near the place of their residence. The ATM card and cheque book shall not be issued. Withdrawal shall be made only on the basis of a withdrawal slip which shall be issued to them directly by the Manager of the concerned bank.

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

10. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

NAJMI WAZIRI, J

NOVEMBER 21, 2019/kb