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

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Date of Decision: 08.04.2019

% **MAC.APP. 831/2018**

BADAL & ORS

..... Appellants

Through Mr. L.C. Sethi, Advocate.

versus

IFFCO TOKIO GENERAL INSURANCE CO LTD & ORS
(M/S SPECTRAN CONCRETE PVT LTD) Respondents

Through Mr. J.P.N. Shahi, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

A.K. CHAWLA, J. (ORAL)

By the instant appeal, the claimants/appellants, seek enhancement of compensation awarded to them under the impugned judgment/Award dated 01.05.2018, where-under, a total compensation of Rs.8,43,863.20, has come to be awarded. Since, the issue agitated in the appeal is only qua the quantum of compensation, the advertence to the other factual aspects, on which the claim petition was founded, does not call for any advertence.

2. Compensation has come to be awarded as follows:

1.	Medical Expenses	Nil.
2.	Just Compensation	Rs. 7,73,863.2/-
3.	Funeral expenses and loss of Estate and Consortium	Rs. 15,000/- + Rs.15,000/- + Rs. 40,000/- = Rs. 70,000/-
	<u>Total</u>	<u>Rs. 8,43,863.2/-</u>

3. From the impugned judgment, it can be deduced that the compensation under the head of just compensation, is the compensation under the head of loss of income/dependency. This is the main head of the compensation and in the said context, it would be relevant to advert to the observations made by the Tribunal in the impugned judgment, as under:

“Just compensation

21. It has been claimed by the petitioners that deceased was 58 years old which is mentioned in Ration Card and deceased was retired as Hawaldar from Indian Army in December 1999 and he was drawing pension Rs.13,000/- at the time of accident. The copy of the discharge book is Ex. PW1/5.

22. It has been deposed by Smt. Saroj W/o Deceased Banwari Lal that deceased was earning

Rs.8,028/- per month by doing the job as security man and the same has been proved by PW-5 i.e. Keshav Security Service Pvt. Ltd.

23. It has been claimed by the petitioners Smt. Saroj W/o Late Banwari Lal has deposed that her husband was doing casual services of security man having gun license at marriage and other social function and earn Rs.5,000/- which has been proved by PW-5 Sh. Narender S/o Late Sh. Prabu Dayal, Field Officer, M/s Keshav Security Services and the copy of the Gun license of deceased Ex.PW1/8.

*24. That, at the time of the accident deceased was married and he died leaving behind his wife, three sons and one daughter and all are married and major and were not dependent upon the deceased.....
.....*

27. That, the calculation of just compensation is as under:-

Rs. 8,028/-+5,000/- = 13,028+10% (Future Prospects) = 1,302.8/-, 13,028/-+1,302.8/- = 14,330.8X12X9X1 divided by 2 + 7,73,863.2/- (Rupees Seven Lacs Seventy Three Thousand Eight Hundred Sixty Three and Two Paisa Only) is awarded just compensation.”

4. In the submissions of learned counsel for the appellants, the Tribunal erred in taking the wages of the deceased at Rs.8,028/- only. It is strenuously contended that the deceased was employed with M/s Keshav Securities

Services, was never in dispute. Also, in his submissions, PW-5, who was the Field Officer of the said firm, had duly proved the salary record of the deceased from March, 2013 to October, 2013, as Ex.PW5/A (Colly.). Perusal of this salary record Ex. PW-5/A (Colly.) would show that for the last 7 months prior to the occurrence of the accident, the deceased was being paid varying wages in the sums of Rs.12,660/-; Rs.13,586/-; Rs.12,351/-; Rs.12,968/-; Rs.11,666/-; Rs.13,277/-; and Rs.12,750/-. This PW-5 was duly cross-examined on behalf of the Insurance Company. Nothing however emerges during his cross-examination, which would cast doubt on the salary record Ex. PW-5/A. Actually, there is no challenge to the entries contained in the said record Ex. PW-5/A (Colly.). The figure of Rs.8,028/-, which finds mention in the salary record Ex. PW-5/3, on a careful consideration, would reveal that it reflects only the minimum wage, though, he was actually, earning more, having put in more working hours. In the face of such record, the Tribunal's taking the minimum wage at Rs.8,028/-, as finds mention in a column of Ex. PW5/3, was not the correct manner to assess the just and fair compensation. A perusal of the observations and the findings arrived by the Tribunal as quoted in the forgoing para, would show that the Tribunal failed to take note of such vital piece of evidence on record. Suffice to say, the just and fair compensation to arrive at the loss of income/dependency, has to be arrived taking into account, as far as possible, in close approximation, if, the actual income at the time of accident is not feasible to be established with cogent evidence. In doing so, an average of such wages of the deceased for the last six months, could be the just manner of assessing the income of the deceased. The average of such wages of the

deceased per month would come to Rs.12,865/-, which figure, Mr. Shahi does not dispute. Of course, it is arithmetical calculation only. Mr. Pahuja, Id. Counsel for the appellants on his part submits that such wages may be taken at Rs.12,800/-. Let it be so. The wages of the deceased so taken, on the basis of the assessment made as provided for in para 27 of the impugned Award, thus, comes to Rs.10,57,320/-. Both the learned counsel for the parties agree to this. Impugned Award would thus, stand modified to that effect.

5. The other ground pressed on behalf of the appellant is as regards the compensation awarded under the head of consortium. In '**National Insurance Company Limited vs. Pranay Sethi and Ors**' 2017 SCC OnLine SC 1270, the Supreme Court has prescribed a figure of Rs.40,000/- under the head of consortium. In **Magma General Insurance Co. Ltd. vs. Nanu Ram**, 2018 SCC Online SC 1546, the Supreme Court, taking note of *Pranay Sethi's* case, has noted that consortium is a compendious term which encompasses spousal consortium, parental consortium and filial consortium. It is so observed, as under:

“.....
.....
...In legal parlance, “consortium” is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, and aid of the other in every conjugal relation.”

Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.”

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.....”
... ..”

6. In view of the *Magma’s* case, the total compensation under the head of consortium comes to Rs.40,000/- x 5 = Rs.2,00,000/-. The impugned Award under this head, thus, stands modified and enhanced from Rs.40,000/- to Rs.2,00,000/-.

7. Lastly, the learned counsel for the appellants submitted that the deduction towards 50% of the personal expenses of the deceased made by the Tribunal was not justified. This Court does not see merit in such submissions. Suffice to observe, the deceased was 58 years, and, but, for the widow, the children are not shown to be dependent on his income anyway.

In the given facts and circumstances of the case, the contention raised to the contrary is therefore, rejected.

8. In view of the foregoing, the impugned judgment/Award, stands modified and enhanced, as follows:

Sl. No.	Heads of compensation	As per the impugned Award	As per the modified Award
1.	Medical Expenses	Nil	Nil
2.	Just Compensation	Rs. 7,73,863.2/-	Rs. 10,57,320/-
3.	Funeral expenses and loss of Estate and Consortium	Rs. 15,000/- + Rs.15,000/- + Rs. 40,000/- = Rs. 70,000/-	Rs. 15,000/- + Rs.15,000/- + Rs. 2,00,000/- = Rs. 2,30,000/-
	<u>Total</u>	<u>Rs. 8,43,863.2/-</u>	<u>Rs.12,57,320/-</u>

9. The enhanced compensation shall be deposited by the insurer-IFFCO Tokio General Insurance Co. Ltd. with the Tribunal within six weeks from today, failing which, it shall attract an interest @ 12% p.a. from today, till the deposit. Impugned Award stands modified accordingly.

10. The appeal stands disposed of in the above terms.

A. K. CHAWLA, J

APRIL 08, 2019/nn