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

% *Decided on: 01.11.2019*

+ MAC.APP. 1046/2016

IFFCO TOKIO GENERAL INSURANCE CO LTD Appellant
versus

KISHAN LAL SHARMA & ORS Respondents

+ MAC.APP. 748/2017

KISHAN LAL SHAMRA & ORS Appellants
versus

IFFCO TOKIO GENERAL INSURANCE
CO LTD & ANR Respondents

Through: Mr. Brijesh Bagga, Advocate for
appellant in item 26 and for R-1 in
item 27.

Mr. Ravi Sabharwal, Advocate for
respondents in item 26.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 47433/2019 in MAC.APP. 1046/2016 & CM APPL. 47437/2019
in MAC.APP. 748/2017

1. Issue notice.
2. The learned counsel named above accepts notice on behalf of the non-applicant-insurance company.

3. These applications seek early hearing of the appeals. For the reasons mentioned in the application, they are allowed.

4. The applications stand disposed-off.

MAC.APP. 1046/2016 & MAC.APP. 748/2017

5. At joint request, the appeals are taken up for disposal.

6. These appeals impugn the award of compensation dated 17.08.2019 passed by the learned MACT in Suit No. 115/15 on the ground that the deceased was a 24 year old qualified computer engineer. He was working as a professional in a private company at a salary of Rs. 21,000/-. Nevertheless, his revenue for the year was shown to be about Rs. 3,00,000/-. Accordingly, Rs.3,20,357/- was taken as the annual earning and 50% of the same was deducted towards his personal expenses as only the parents were considered as the financial dependants; 50% was added towards 'loss of future prospects' and thus, the 'loss of dependency' was so calculated.

7. The learned counsel for the insurance company submits that the income was never proven, therefore, assumption of Rs.3,20,357/- as the annual income is erroneous.

8. The Court would note that the deceased was a qualified computer engineer, he had already earned Rs. 21,000/- from earlier company and the other monies which were credited into his account were through NEFT transfers. PW-1 the mother of the deceased had deposed that he was rendering services in the computer industry as per his qualification and the said revenue was generated as a result of his skills, these transactions would ordinarily be from corporate entities and the same could have been verified.

9. The Court is of the view that there is no error in having taken the said amount as the bank statement was available to the insurer during the trial proceedings and nothing adverse has come on record to show that the monies did not come from corporate entities or that they were from other sources. In the circumstances, the assessment of the learned Tribunal that the said monies were from professional sources cannot be flawed.

10. The Court would further note that the multiplier on the basis of the parents has been taken into consideration instead the multiplier applicable to the age of the deceased. Accordingly, the multiplier of 18 would be applicable.

11. The learned counsel for the insurance company states that the deceased had a personal accident policy under which Rs. 2,00,000/- was paid to the claimants and the said amount ought to have been deducted from the awarded amount in view of the dicta of the Supreme Court in ***Helen C. Rebello (Mrs) and Ors. vs. Maharashtra State Road Transport Corporation and Anr.*** (1991) 1 SCC 90. The learned counsel for the respondents readily agrees that Rs. 2,00,000/- may be deducted from the said amount. It is ordered to be deducted.

12. The Court would note that there are three claimants, therefore, each of the claimants would be entitled to non-pecuniary compensation for 'loss of love and affection' and 'loss of consortium', be it 'filial' or 'fraternal'. While the sister may, in the present circumstances, not be dependant upon the deceased, nevertheless, she has lost a brother, his company and his love and affection. Therefore, she too would be entitled to compensation of Rs. 50,000/- towards 'loss of love and affection' and Rs. 40,000/- towards

‘loss of consortium’ 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. It is so granted. The claimants would also be entitled to and are granted compensation towards ‘Loss of Estate’ and ‘Funeral Expenses’ @ Rs.15,000/- under each head, in terms of the dicta of the Supreme Court in *National Insurance Company Limited vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680.

13. The enhanced amount payable to the claimants is as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 3,20,357/- (annual income of the deceased) x 18 (multiplier) x 150/100 (50% loss of future prospects) x 50/100 (50% deduction towards personal expenses)]	Rs. 43,24,820/-
2.	Loss of love and affection [Rs. 50,000/- x 3 (claimants)]	Rs. 1,50,000/-
3.	Loss of consortium [Rs. 40,000/- x 3 (claimants)]	Rs. 1,20,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
	TOTAL	Rs. 46,24,820/-

14. Let the entire amount payable @ 9% from the date of 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 beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

15. Since the appellant has partially succeeded in MAC.APP. 1046/2016, the statutory amount, alongwith interest accrued thereon be returned to it.
16. The appeals are disposed-off in the above terms.
17. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J

NOVEMBER 01, 2019/AB



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