

\$~19

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

% *Decided on: 09.12.2019*

+ MAC.APP. 609/2017 & CM APPL. 52793/2019

ORIENTAL INSURANCE CO LTD Appellant

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

versus

KALPESHWARI DEVI & ORS Respondents

Through: Mr. Prateek Gangwani, proxy counsel
for Mr. Sameer Mendiratta, Advocate
for R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. At joint request, the appeal is taken up for disposal. It impugns the award of compensation dated 21.04.2017 passed by the learned MACT in Suit No.31/10 (New No. 357825/16) on three grounds. Firstly, on the ground that the multiplier taken into consideration for compensation of 'loss of dependency' is on the higher side, however, the learned counsel for the appellant fairly submits that in view of the decision of Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680, the said argument is not being pressed.

2. Secondly, it is argued that 50% was granted towards 'loss of future prospects'. However, in view of *Pranay Sethi (Supra)*, the same ought to have been 40% since the deceased was not in permanent employment and under the age of 40 years. The contention is correct in view of the age of the

deceased and the impermanent nature of his employment. The award shall stand corrected accordingly.

3. The third ground is that the monthly takeaway emolument of Rs. 11,071.99/- is erroneous in view of the consolidated monthly salary of the deceased at Rs. 6,500/-. The deceased was working as a team professional at Taj Mahal Hotel, Mansigh Road, New Delhi. The employer of the deceased had stated that he could well have risen to the post of Assistant Restaurant Manager and his earnings, with the passage of time and with gaining experience and competence, would have enhanced. However, his life was cut short because of the motor vehicular accident. The increase in his monthly takeaway salary from Rs. 6,500/- to Rs. 11,071.99/- was on account of “tip” (gratuitous payment by a customer/ patron to a waiter etc. in a restaurant for services rendered) being received by the employee. This is a sufficient explanation and the Court would take into cognizance of the fact that in hotel industry, the element of tip does enhance the salary of the service provider.

4. The impugned order has dealt with the issue as under:

“10. Issue no. (ii)

In view of the findings of issue no. 1, petitioners are entitled to compensation.

Petitioners claimed that deceased aged about 26 years was working as Team professional with Taj Man Singh Hotel and earning Rs.10,000/-per month along with tip of Rs.15,000/-per month.

PW5 proved the pay slip of deceased for the month of September 2009 (Ex.PW5/A) and testified that deceased Virender Kumar was working as Team Professional with Taj Mahal Hotel, New Delhi and could have been permanent employee of the hotel, subject to his performance and could reach upto the post of Assistant Restaurant Manager.

In cross-examination by counsel for Insurance Company, he testified that as per appointment letter of deceased (Ex.PW5/DA), the consolidated salary of deceased was Rs.6,500/- whereas in the pay slip his total earning was mentioned as Rs.11,071.99 per month. He testified that the remaining amount was as tip which deceased had received in the month of September 2009.

In view of the testimony of PW5 (employer of deceased), income of deceased shall be taken as Rs.11,071.99 per month for purpose of computation of compensation.”

5. For the learned Tribunal to have taken the view as it has, the Court finds no reason to interfere because it takes into account a prevalent practice of earning in the hospitality industry. There is no merit in the appellant's arguments in this regard, accordingly it is rejected.

6. The Court would note that the compensation for 'loss of love and affection' has been granted at Rs. 1,00,000/- to the mother of the deceased but nothing has been granted towards 'loss of consortium'. Therefore, 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, the compensation under the two heads i.e. 'loss of love and affection' and 'loss of consortium' would be Rs. 50,000/- and Rs. 40,000/-, respectively. It is so awarded. Additionally, compensation towards 'loss of estate' and 'funeral expenses' shall be Rs. 15,000/- each in terms of the dicta of the Supreme Court in **National Insurance Co. Ltd. vs. Pranay Sethi & Ors.**, (2017) 16 SCC 680. It is so awarded.

7. The issue of dependency on account of the brother of the deceased, has not been taken into consideration in the impugned order. However, as an aggrieved brother of the deceased, he too would be entitled to

compensation towards ‘loss of love and affection’ and ‘loss of fraternal consortium’ @ Rs. 50,000/- and Rs. 40,000/- respectively, in terms of *Magma (Supra)*. Accordingly, it is so awarded. Only Rs. 90,000/- shall be paid to the brother.

8. Accordingly, the amount payable to the claimants is as under:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 11,071.99/- (monthly income of the deceased) x 12 (months) x 17 (multiplier) x 140/100 (loss of future prospects) x 50/100 (50% deduction towards personal expenses)]	Rs. 15,81,080 /-
2.	Loss of love and affection [Rs. 50,000/- x 2 (claimants)]	Rs. 1,00,000/-
3.	Loss of consortium [Rs. 40,000/- x 2 (claimants)]	Rs. 80,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
	TOTAL	Rs. 17,91,080/-

9. Let the aforesaid amount of Rs. 17,91,080/-, alongwith interest @ 9% per annum 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 of the Award, in terms of the scheme of disbursement specified therein.

10. The awarded amount is stated to have been deposited before the learned Tribunal. Accordingly, it shall be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein as well as in terms of this order. If there is a shortfall in the deposited amount, it shall be made up by the appellant. Excess amounts, if any, shall be returned to the appellant.

11. Since the appellant has been partly successful in the appeal, let the statutory amount, alongwith interest accrued thereon, be returned to the appellant.

12. The loss of life occurred on 18.10.2009 i.e. more than a decade ago, in which the mother lost her young son and a brother lost his brother, no monies have been paid to them thus far. The learned counsel for the claimants submits that some monies may be released right away.

13. In view of the above, let Rs. 4,00,000/- be released right away to the mother of the deceased directly into her bank account maintained near her place of her residence. The learned Tribunal shall verify the residential proximity of such bank account, before the release of the monies. The appeal is disposed-off in the above terms.

14. 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

DECEMBER 09, 2019/AB