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

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Decided on: 30.10.2019

+ **MAC.APP. 737/2017 & CM APPL. 29686/2017 & 29688/2017**

BHARTI AXA GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Mr. Navneet Kumar, Adv. with
Mr. Mohit Singh, Adv.

versus

RAJNI YADAV & ORS

..... Respondents

Through: Mr. P.C. Dogra, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 06.03.2017 passed by the learned MACT in MACP No. 1440/16 on the ground that against the varying monthly salary of the deceased, the higher component is inclusive of breakfast and lunch, which was personal allowance to the deceased, has been taken as the basis of computation of compensation.

2. The deceased was working as a driver. His salary included Basic, Special Allowance, GWR (Good Work Reward) and Outstation allowance (which was understood as Inconvenience allowance) and mobile expenses. The last expense varies from month to month. For a fair assessment, average salary of three months will be taken and average deduction towards breakfast and lunch shall be deducted therefrom. The salary for three

months, i.e. for February, 2013 was 27,167/-, for March, 2013 was Rs. 21,259/- and for April, 2013 was Rs. 22,631/-. The average of three months' salary comes out to Rs. 23,686/-. From this average, deduction towards breakfast and lunch shall be made which is as under:

S. No.	Month	Breakfast	Lunch	Total
1	February, 2013	Rs. 1,520/-	Rs. 1,520/-	Rs. 3,040/-
2.	March, 2013	Rs. 880/-	Rs. 880/-	Rs. 1,760/-
3.	April, 2013	Rs. 1,120/-	Rs. 1,120/-	Rs. 2,240/-
				Rs. 7,040/-

3. Accordingly, the salary of the deceased shall be taken as Rs. 16,646/- (Rs. 23,686/- less Rs. 7,040/-) for computation of 'loss of dependency'.

4. The Court would note that there are five claimants, therefore, in terms of the dicta of Supreme Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, (2018) 18 SCC 130, 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'. Accordingly, they are granted compensation @ Rs. 50,000/- and Rs. 40,000/- towards 'loss of love and affection' and 'loss of consortium', respectively.

5. The impugned order has granted compensation towards 'Loss of Estate' and 'Funeral Expenses' @ Rs. 1,00,000/- and Rs. 25,000/-, respectively. Whereas, it should have been Rs. 15,000/- under each head, 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 granted.

6. The amount payable to the claimants is as under:-

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 16,646/- (income of the deceased) x 12 (months) x 15 (multiplier) x 150/100 (loss of future prospects) x 75/100 (1/4th deduction towards personal expenses)]	Rs. 33,70,815/-
2.	Loss of love and affection [Rs. 50,000/- x 5 (claimants)]	Rs. 2,50,000/-
3.	Loss of consortium [(Rs. 40,000/- x 5 (claimants))]	Rs. 2,00,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
	TOTAL	Rs. 38,50,815/-

7. The learned Tribunal has awarded interest @ 10% p.a. from the date of filing of the petition till its realization. The same is reduced to 9%. p.a. Let the aforesaid amount alongwith interest @ 9% p.a. 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 beneficiaries of the Award in terms of the scheme of disbursement specified therein.

8. The statutory amount, alongwith interest accrued thereon, shall be returned to the appellant.

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

NAJMI WAZIRI, J

OCTOBER 30, 2019

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