KAMLESH KUMAR

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

% *Decided on: 24.09.2019*

\+ MAC.APP. 703/2017 & CM APPL. 28452/2017

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. Salil Paul, Advocate.

versus

AZMATI KHATOON & ORS ..... Respondents

Through: Mr. S.N. Parashar, Advocate for R-1 to R-7.
Ms. Pranjal Shekhar, Advocate on behalf of Mr. Amit Nehra, Advocate for R-9.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CAV 709/2017

1. Since the learned counsel named above has entered appearance on behalf of the caveators, the caveat stands discharged.

MAC.APP. 703/2017 & CM APPL. 28452/2017

2. This appeal impugns the award of compensation dated 16.05.2017 passed by the learned MACT in ***Smt. Azmati Khatoon vs. Satish Kumar & Ors.,*** on the ground that the computation of compensation

is erroneous. The learned counsel for the appellant contends that the addition of 50% towards 'loss of future prospects' is erroneous and the same should have been considered as 40% because the deceased was not in permanent employment and he was below 40 years of age at the time of motor vehicular accident. The learned counsel for the claimants agrees that the error is evident. Therefore, in terms of the dicta of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.,*** (2017) 16 SCC 680, claimants shall be entitled to compensation towards 'loss of future prospects'@ 40% and not @ 50%.

3. The amounts awarded by the learned Tribunal are as under:

S.No.	***Head***	***Amount***
1.	*Loss of Dependency*	*Rs. 9,07,776/-*
2.	*Loss of love and affection to children (Rs. 1,00,000x6)*	*Rs. 6,00,000*
3.	*Loss of consortium*	*Rs. 1,00,000/-*
4.	*For funeral expenses*	*Rs. 25,000/-*
5.	*Loss of estate*	*Rs. 1,00,000/-*
TOTAL		***Rs. 17,32,776/-***

4. The Court would note that there are 7 claimants and the compensation as per the impugned award towards 'loss of love and affection' at the rate of Rs. 1,00,000/- per claimant for the moment will deemed to be on the higher side because in terms of dicta of Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.,*** 2018 SCC OnLine SC 1546, the same has been limited to Rs. 50,000/- for each of the claimants. The said judgment has also held

that each of the claimants shall also be entitled to compensation towards 'loss of consortium' be it 'spousal', 'filial' or 'parental' @ Rs. 40,000/-. The same is granted to the claimants. Furthermore, compensation towards 'loss of estate' and 'funeral expenses' shall be limited to Rs. 15,000/- each.

5. Accordingly, the total payable amount by the insurer would be as under:-

S.No.	Particulars	Amount
1.	Loss of Dependency [(Rs. 3,940/- (minimum wage) x 12(months) x 16(multiplier) x 140/100 (loss of future prospects) less 20/100 (1/5th deduction towards personal expenses)]	Rs. 8,47,257/-
2.	Loss of love and affection [Rs. 50,000x7 (claimants)]	Rs. 3,50,000/-
3.	Loss of consortium [Rs.40,000/-x7 (claimants)]	Rs. 2,80,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
TOTAL		**Rs.15,07,257/-**

6. The rate of interest is reduced from 10% to 9%, because it is noticed that the latter is the standard rate of interest being awarded from the past almost half a decade.

7. Let the aforesaid amount, alongwith interest thereon @ 9% per annum, from the date of filing of the petition till its realization be deposited by the appellant before the learned Tribunal within three weeks of copy of receipt of this order, for it to be released to the

beneficiaries of the award, in terms of the scheme of disbursement specified therein.

8. Excess amounts, if any, alongwith statutory deposit and the interest accrued thereon shall be returned to the appellant.

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

NAJMI WAZIRI, J

SEPTEMBER 24, 2019
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HIGH COURT OF DELHI
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