$~9

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

% *Decided on: 23.09.2019*

\+ **MAC.APP. 882/2017**

NATIONAL INSURANCE COMPANY LTD ..... Appellant
Through: Ms. Hetu Arora Sethi, Advocate.

versus

PUNAM @ POONAM & ORS ..... Respondents
Through: Mr. Pankaj Kumar Deval and Mr. Apar Sirohi, Advocates for R-1 to R-5.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

MAC.APP. 882/2017 & CM APPL. 35703/2017

1. This appeal impugns the award of compensation dated 17.07.2017 and 27.07.2017 passed by the learned MACT in MACT No. 14/15, on the ground that there was no basis for adopting minimum wages applicable in Delhi, for calculating the amount of compensation. The claimants are residents of District Baghpat, Uttar Pradesh, but claimed that the deceased was a resident of Delhi and earning his living as a property dealer. However, they were not able to prove that the deceased was working in Delhi or was otherwise a resident of Delhi.

2. In para 7.2 of the impugned order, the learned Tribunal records the statement of PW-1 – Ms. Punam i.e. widow of the deceased, who has stated in her cross-examination as under:-

> *"....It is correct that I have not filed any proof of income and employment of my deceased husband in Delhi...."*

3. The claimants have failed to bring anything on record to prove that the deceased was engaged in the business of real estate or earning Rs. 25,000/- per month. On a query being put to the learned counsel for the respondent whether the deceased had a bank account in Delhi, the answer is in the negative. He does state that the said rent agreements were entered into after the demise of the deceased. Obviously, the same would prove tenancy of the claimants, etc. prospectively. The Court is of the view that if the deceased was running his business in Delhi, he would ordinarily have a bank account in the city. Furthermore, if he was a resident of Delhi, atleast some person would have come forward to support the appellants' contention that the deceased was residing in Delhi on a rental basis. In the absence of any proof in this regard, there is no basis for adopting the minimum wages applicable to a graduate in Delhi. At best, the minimum wages applicable to a Graduate in Uttar Pradesh, would be considered since the deceased was a resident of Uttar Pradesh. At the relevant time such minimum wage was Rs. 7,000/- per month. Accordingly, the loss of compensation should have been calculated @ Rs. 7,000/- per month. As per order of the learned Tribunal dated 27.07.2017, the multiplier was changed from 16 to 15.

4. Since the deceased was not in permanent employment and was below the age of 40 years, therefore, in terms of the dicta of the Supreme Court in

National Insurance Co. Ltd. v. Pranay Sethi & Ors (2017) 16 SCC 680, he would be entitled to and is granted the compensation towards 'loss of future prospects' @40%.

5. Additionally, the Court would note that in terms of the dicta of the Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram & Ors.*** 2018 SCC OnLine SC 1546, each of the claimants are also entitled to the compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and @ Rs. 40,000/- respectively. It is so granted. Additionally, each of the claimants are also entitled to the compensation towards 'loss of estate' and 'funeral expenses' @ Rs. 15,000/- under each head, instead of Rs. 25,000/-.

6. Accordingly, the amounts payable are as under:-

S.No.	Particulars	Amount
1.	Loss of Dependency (Rs. 7,000/- (minimum wage)x12(months)x15(multiplier)x75/100(1/4th deduction towards personal expenses)x140/100 (40% towards loss of future prospects)	Rs. 13,23,000/-
2.	Loss of Love and Affection [Rs. 50,000/- x5(claimants)]	Rs. 2,50,000/-
3.	Loss of consortium [Rs. 40,000/- x5(claimants)]	Rs. 2,00,000/-
4.	Loss of Estate	Rs. 15,000/-

5.	Funeral Expenses	Rs. 15,000/-
TOTAL		Rs. 18,03,000/-

7. Let the entire amount as computed hereinabove, alongwith interest @ 9% p.a. from the date of filing of the claim petition till its realization be deposited by the appellant before the learned Tribunal, within three weeks from the date of receipt of copy of the order, to be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein. The appeal is disposed off in the above terms.

8. Since the appellant has succeeded in the appeal, the statutory amount, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J

SEPTEMBER 23, 2019
RW