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

% *Decided on: 23.10.2019*

\+ MAC.APP. 938/2017 & CM APPL. 38660/2017

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

Through: Mr. Salil Paul and Mr. Sahil Paul, Advocates.

versus

CHHOTI DEVI & ORS ..... Respondents

Through: Mr. S.N. Parashar, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 05.08.2017 passed by the learned MACT in Suit No.57686/16 on the ground that 1/3rd deduction towards 'personal expenses' on the earnings of the deceased has been wrongly applied, because of the three claimants, only his surviving spouse should have been considered as a dependent. The other claimants were his married daughter and two major sons.

2. The learned Tribunal reasoned that since the daughter was married, she would not be deemed to be dependent upon her father. The two sons, being 28 and 23 years old too, were not be considered as dependent upon the deceased. Only the widow of the deceased was considered as a dependent.

3. It is argued that as a corollary, half of the earnings of the deceased ought to have been deducted, instead of 1/3rd.

4. The 23 year old son was stated to be a student and financially dependent upon his father. The said contention was rejected in the absence

of any documentary proof in this regard. The respondents contend that relevant documents did exist, but due to lack of proper guidance, the same could not be adduced. The respondents seek one more opportunity to lead the relevant evidence. The Court is of the view that, lest rightful claim of the claimants be irreparably prejudiced because of non-furnishing of requisite documents and relevant information, as may be available, apropos the claim of 23 year old son that he was a student, the case is remanded to the learned Tribunal for re-adjudication of this issue only. The impugned order is modified accordingly.

5. The learned counsel for the appellant further submits that there is no deduction made towards income tax in the computation of loss of dependency. The learned counsel for the respondents submits that the requisite TDS has already been made and no further deductions were required to be made. Be that as it may, these issues shall be duly dealt with by the learned Tribunal in the remand.

6. The learned counsel for the appellant seeks deduction of Metro Allowance, on account of it being personal to the deceased. The learned counsel for the respondents fairly agrees that it was personal to the deceased. Deduction on this allowance shall, therefore, be made from the carry home amount.

7. Transport allowance, washing allowance and ration money could be used for the benefit of the entire family therefore they will not be regarded as specific to the employee. Deduction of these amounts cannot be made and would be included in the amount of dependency. Accordingly, deductions under these heads are rejected.

8. Each of the claimants have been granted Rs. 1,00,000/- towards 'loss of love and affection'; while a lumpsum of Rs. 1,00,000/- has been granted as compensation towards 'loss of consortium'. However, 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, each of the claimants would be entitled to and are granted non-pecuniary damages of 'Loss of love and affection' and 'Loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively. The deceased has 4 survivors, his widow, married daughter and two sons. Each one of them would feel the absence of his consortium and his love and affection and would be entitled to the same. Therefore, the total amount payable towards the aforesaid two heads would be (Rs. 50,000/-x4= Rs. 2,00,000/- and Rs. 40,000/-x4= Rs. 1,60,000/-) Rs. 3,60,000/- and not Rs. 1,00,000/-. Furthermore, a sum of Rs. 35,000/- has been granted for 'funeral expenses' and 'loss of estate', in terms of decision of Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors.***, (2017) 16 SCC 680, the compensation for each of the aforesaid heads shall be Rs. 15,000/- i.e. a total of Rs. 30,000/-. It is so ordered.

9. The case is remanded to the learned Tribunal for determination of 'loss of dependency' apropos the younger son. The parties shall appear before the learned Tribunal on 17.12.2019. The learned counsel for the parties submit that since the issue of determination is very limited, they shall request the learned Tribunal to dispose-off the case preferably within a period of six months and shall assist the Court on every date when the case is so listed.

10. The parties shall lead evidence in support of their contentions.

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

NAJMI WAZIRI, J

OCTOBER 23, 2019/AB