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

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Decided on: 16.01.2020

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MAC.APP. 567/2016

BHAGAT SINGH RAWAT & ORS

..... Appellants

Through: Mr. B.S. Rawat, Adv.

versus

SHRI RAM GENERAL INSURANCE

COMPANY LIMITED

..... Respondent

Through: Mr. Sameer Nandwani, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 03.03.2016 passed by the learned MACT in Suit No. 168/2014 on the ground that while computing compensation towards 'loss of dependency', the relevant minimum wages applicable to a Graduate was not applied. The motor vehicular accident occurred on 21.03.2014; that as per the notification of the Govt. of NCT of Delhi, the minimum wages applicable to a Graduate w.e.f. 01.10.2013 was Rs. 10,686/- and the same would be applicable.

2. However, the learned counsel for the insurer submits that the deceased was not a graduate but only a student of Bachelor of Hospitality Management from Kumaun University, Nainital. It has been proven by the appellants that the deceased was in the prime of his life, he was 24 years old at the time of the motor vehicular accident and was earning Rs. 7,688/- by

working as an intern with M/s RTC Restaurants India Ltd. This salary of the deceased was accepted by the learned Tribunal. In this regard, it held as under:

“20.Income: PW1 in his cross examination stated that his deceased son was working in hotel but he does not know in which hotel he was working. His son was getting salary in cash. He is not aware about which job work and designation in the said hotels. He has not filed any offer letter/appointment letter pertaining to the job of his deceased son. He also does not know since how long his deceased son was working in the hotel. He does not know about the salary of his son. He does not know whether his deceased son was paying income tax or not. For proving the same, he filed on record salary slips for the month of December 2013 and March 2014 issued from RTC Restaurants (India) Limited (Ex, PW1/5 (colly) and his salary is mentioned as Rs. 7688/- per month. Employee I card of deceased Kuldeep Singh issued from RTC Restaurants (India) Limited, 705, Chiranjiv Tower, 7th Floor, 43, Nehru Place, New Delhi is also on record which shows that designation of deceased is Server and his date of joining is 28.10.2013, therefore income of deceased is assessed as 7688/- per month.”

3. The Court would note that the emoluments in the hotel and catering industry are not limited to the salary, but a cognizable portion of it comes through tips given by gratified customers. Ordinarily these tips would depend upon the class of the restaurant and hotel where the interns or service providers are engaged. The deceased was working with M/s RTC Restaurants (India) Ltd., 705, Chiranjiv Tower, 7th Floor, 43, Nehru Place, New Delhi. Surely this place would be frequented by many patrons, as it is located in a well known commercial hub of the city. Therefore, a fair assessment of tips in any restaurant in Nehru Place would be an amount not

less than Rs. 6,000/-. Let this amount be added to the monthly salary of the deceased. The monthly income would then be Rs. 13,688/-.

4. Since the deceased was in private employment and under the age of 40 years, there shall be an addition of 40% towards 'loss of future prospects', in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680. Insofar as there are three claimants, deduction towards 'personal expenses' shall be 1/3rd.

5. It is pertinent to note that 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 shall be entitled to and are hereby granted compensation for 'loss of consortium' and 'loss of love and affection' @ Rs. 40,000/- and Rs. 50,000/- respectively. Additionally, in terms of *Pranay Sethi* (supra), each of the claimants would be entitled to and are granted compensation for 'funeral expenses' and 'loss of estate' @ Rs. 15,000/- each.

6. Following the dicta of the Supreme Court in *Magma* (supra), this Court in *National Insurance Co. Ltd. vs. Lokesh Verma & Ors.*, MAC. APP. 762-763/2019, decided on 02.09.2019, had awarded compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively, to each of the claimants. In the aforesaid judgment, it was held as under:

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10. The Court would note that in terms of *Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546, each of the two claimants would be entitled to an award of compensation at the rate of Rs. 40,000/- and Rs. 50,000/- towards “loss of consortium” and “loss of love and affection”

respectively. The impugned order has only awarded Rs. 40,000/- towards “loss of consortium”, same would have to be supplemented by another Rs. 40,000/- towards “loss of consortium” and Rs. 1,00,000/- towards “loss of love and affection” (Rs. 50,000/-x2) ”

7. SLP (Civil) No(s). 25316-25317/2019, against the said judgment was dismissed by the Supreme Court on 24.10.2019.
8. The amount payable to the appellants/claimants shall be:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 13,688/- (monthly income of the deceased) x 12 (months) x 18 (multiplier) x 140/100 (loss of future prospects) x 66.6/100 (1/3rd deduction towards personal expenses)]	Rs. 27,56,741/-
2.	Loss of love and affection [Rs. 50,000/- x 3 (claimants)]	Rs. 1,50,000/-
3.	Loss of consortium [Rs. 40,000/- x 3 (claimants)]	Rs. 1,20,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
	TOTAL	Rs. 30,56,741/-

9. The aforesaid amount, alongwith interest accrued @ 9% per annum from the date of filing of the claim petition till its realization, shall be deposited by the insurance company before the learned Tribunal, within a period of three weeks from the date of receipt of copy of this order, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

10. The learned counsel for the claimant submits that they lost their son in the year 2014 and thus far they have received only Rs. 3 lacs approximately in the year 2016. They need some more monies right away to take care of their pressing financial needs. Let an amount of Rs. 4 lacs i.e. Rs. 2 lacs each, be released directly into their respective accounts maintained in a Bank near their place of residence, within three weeks from the date of receipt of this order.

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

JANUARY 16, 2020/kk

NAJMI WAZIRI, J



न्यायमेव जयते