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

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Decided on: 15.01.2020.

+ MAC.APP. 54/2016

SANJEEV GOSWAMI & ORS

.....Appellants

Through: Mr. Ashok Popli and Mr. Sanjay Agnihotri, Advocates alongwith Appellant no. 1.

versus

KANNAPPA & ORS (SHRIRAM GENERAL INSURANCE CO LTD)

.....Respondents

Through: Mr. Sameer Nandwani and Mr. Abhay Singh Bhadoria, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 14.08.2015 passed by the learned MACT in Petition No. 73/13, on the ground that merely the minimum wages applicable to a graduate was applied in computation of the 'loss of dependency'. It is the appellants' case that the deceased, who was a 24 year old young man, lost his life in the unfortunate motor vehicular accident which occurred on 29.04.2012. He was working with M/s Pavers England Ltd. Although, the claimants had filed the relevant ITRs showing his employment with the said company for three years, but

the same was not taken into consideration, as according to the learned Tribunal, other documents were not presented. It held as under:

“LOSS OF DEPENDENCY :

10. PW-1 (Father of the deceased) has stated that the deceased was 24 years of age at the time of accident and was proprietor in the firm namely M/s Dhruv Trading Co. and he was also employed with M/s Pavers England Ltd. PW-1 has filed income tax return for the year 2010-11, 2011-12 and 2012-13. Counsel for insurance company submits that no document is placed on record by PW-1 in support of his averment that the deceased was proprietor of M/s Dhruv Trading Co. Even no document has been placed on record regarding the employment of deceased with M/s Pavers England Ltd. During cross-examination even PW-1 has accepted that he is even not aware about the nature of business of the deceased and his office M/s Pavers England Ltd. It is further submitted by ld. counsel for the insurance company that in the absence of these substantial documents, it is very difficult for the Tribunal to assess the income of the deceased as there are all apprehensions of showing higher income, income being self-assessed. It is argued that the income tax return for the year 2012-13 is filed by PW-1, father of the deceased. No document pertaining to educational qualification of the deceased is placed on record. It is argued by ld. counsel for the insurance company that in his cross-examination PW-1 has admitted that the deceased was residing at Chennai 1 ½ years prior to the accident, so he cannot do business in Delhi at the same time. It is further argued that no document/entry in the passbook is produced to certify the income as per income tax return filed. Heard. Record perused carefully. It is an admitted fact that apart from income tax return nothing has been placed on record by the claimant in order to throw light on the income and business of the deceased. The Tribunal is not aware of the educational qualification of the deceased. Nothing has been brought on record by PW-1 that he was dependent on the income of the deceased but the fact is that the deceased

Dhruv Goswami has died and compensation is required to be given to his legal heirs. Hence, this Tribunal is of the opinion that since no effective evidence is placed on record by the legal heirs of the deceased, the minimum wages of a 'graduate' be taken for calculating the loss of dependency in order to award adequate compensation to the claimant. The accident took place on 29.04.2012, the minimum wages of 'graduate' on the date of accident was Rs. 9,262/- p.m. Thus, the annual income of the deceased comes to Rs. 9,262 x 12 = Rs. 1,11,144/- p.a.”

2. It is argued that while the ITRs themselves were sufficient to prove the income and earnings of the deceased. Nevertheless, the claimants have now procured Form No. 16A under Rule 31 (1) (a) of the Income Tax Act, 1961, which is a Certificate under section 203 of the Income Tax Act, 1961, showing the deduction of taxes of a salaried employee. It shows that for AY 2012-13, the salary of the deceased-Mr. Dhruv Goswami, was Rs. 4,06,434/- against which a tax amount of Rs. 10,218/- was paid.

3. The Court would note that the ITR of the said assessment year shows the gross total income of the deceased as Rs. 8,81,263/-, against which tax amount of Rs. 1,17,303/- was paid. At least, one thing is proven, that he was earning Rs. 4,06,434/- from employment with the aforesaid company. He was also earning monies through other sources. According to the claimants, the deceased was an employee and simultaneously carrying on a business in his private time. The same is reflected in his ITR for AY 2010-11, which had a gross total income of Rs. 3,35,303/- against which tax of Rs. 15,000/- was paid. For AY 2011-12, the gross total income was Rs. 5,04,157/- against which, tax of Rs. 34,734/- was paid. The assessment of each of the ITRs is supported by computation of assessment of total income. For AY

2011-12, it shows income from business and profession as well, apart from the salary received by the deceased from M/s Pavers England Ltd, including Transport Allowance, HRA and Grade/Special Management Allowance of Rs. 3,15,000/-. It shows income of Rs. 2,67,565/- from business and profession as well. This is much prior to his demise. HRA payments by the employer have also been annexed to the accounts.

4. Similarly, for AY 2012-13, the income from M/s Pavers England Ltd and income from business and profession had been shown. The gross total income from Salary, including Transport Allowance and HRA, Chapter IV A and Chapter IV D of the Income Tax Act, 1961, shows the income of the deceased from salary, as well as income from business and profession, separately. As per the Profit and Loss Account, the income is shown as Rs. 6,02,366/- with a depreciation of Rs. 3,283/-. Therefore, the gross total income comes to Rs. 8,81,263/- against which a TDS of Rs. 35,864/- had already been paid.

5. In other words, the monies, which came into the account of the deceased were duly accounted for and were from proven legitimate sources. In the circumstances, there is no reason to disregard or disallow the ITRs filed by the claimants. Therefore, in terms of the ITR for AY 2012-13, Rs. 7,63,960/- (Rs. 8,81,263/- less Rs. 1,17,303/-) shall be considered as the annual income of the deceased for computing 'loss of dependency'.

6. Since the deceased was in 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.

7. The Court would 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.

8. 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) ”

9. SLP (Civil) No(s). 25316-25317/2019, against the said judgment was dismissed by the Supreme Court on 24.10.2019.

10. The amount payable to the appellants/claimants shall be:

S.No.	Particulars	Amount
1.	Loss of Dependency [Rs. 7,63,960/- (annual income of the deceased) x 18 (multiplier) x 140/100 (loss of future prospects) x 66.6/100 (1/3rd deduction towards personal expenses)]	Rs. 1,28,21,694/-
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. 1,31,21,694/-

11. The aforesaid amount, alongwith interest thereon @ 9% per annum, from the date of filing of the claim petition till its realization, shall be deposited by respondent no. 3-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.

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

NAJMI WAZIRI, J

JANUARY 15, 2020

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