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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 12.12.2019

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MAC.APP. 26/2019

DINCY DEVASSY

..... Appellant

Through: Mr. Siddharth Sharma & Ms. Anu
Mehta, Advs.

versus

UNITED INDIA INNSURANCE CO & ORS

..... Respondents

Through: Mr. D.D. Singh, Adv. for R-1.
Mr. S.N. Parashar, Adv. for R- 2 & 3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

MAC.APP. 26/2019 & CM APPL. 326/2019 & 328/2019

1. This appeal seeks enhancement of the compensation awarded by the learned Tribunal in Case No. 357310/16 decided on 05.06.2018. At the outset, the Court would note that no compensation has been granted for 'loss of love and affection' and 'loss of consortium'. In terms of *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, 2018 SCC Online SC 1546, each of the three claimants would be entitled to Rs. 50,000/- and Rs. 40,000/- towards of 'loss of love and affection' and 'loss of consortium' respectively. The same is granted to them. Accordingly, on this account, the claimants shall be paid Rs. 2,70,000/- along with interest at the rate of 9% per annum from the date of filing of the claim petition till its realization.

2 The learned Tribunal has awarded Rs. 1,68,39,642/- along with interest @ 9% per annum in favour of the widow of the deceased and his parents. However, the widow of the deceased has been apportioned only Rs. 3,91,054.47/-. There is no persuasive reason stated in the impugned order for the starkly disproportionate apportionment against the widow. The learned counsel for the appellant submits that simply because she got re-married, it could not be a reason to deprive her of her rightful claim. The Court is of the view that re-marriage of a widow has nothing to do with her right to and claim for compensation, for the loss which accrued to her on account of unnatural demise of her husband.

3. The calculation of loss of dependency was on the basis of her dependency on her deceased husband; her loss is equal to the loss of dependency suffered by her parents-in-law. Her decision to re-marry was entirely her personal choice, over which nobody can have any say. Her right to claim compensation crystallized upon her husband's life being tragically snatched away in the motor accident. Therefore, simply because she has now re-married, her claim does not abate or lessen. Who can judge whether the second marriage was not a compromise because of her personal circumstances and whether it would have the same value emotionally and psychologically as the first marriage. Her entitlement fructified when the dependency was calculated. Therefore as an aggrieved widow, she would be entitled to a share of compensation apropos "loss of dependency" of equal amount to her parents-in-law, who had lost their son. The learned counsel for the parents of the deceased, has nothing to say to the contrary.

4. Accordingly, each of the claimants shall receive equal share in the awarded amount. The impugned order is modified to the extent that the widow of the deceased will receive 1/3rd share i.e. Rs. 56,13,214/- of the awarded amount of Rs. 1,68,39,642/- alongwith interest accrued thereon.

5. The Court is informed by the learned counsel for the appellant that by order dated 10.12.2018 it was directed that 50% of the awarded amount, deposited in this Court be released into the savings bank account of the claimants alongwith interest accrued thereon. In the said circumstances, of the remaining 50% of the awarded amount, the widow shall first receive her 1/3rd share (i.e. a total of Rs. 56,13,214/- after deducting any amounts which may have been paid to her) alongwith corresponding interest accrued thereon, and the balance amount shall be released to the parents of the deceased equally.

6. The appeal is allowed and disposed off accordingly.

NAJMI WAZIRI, J

DECEMBER 12, 2019_{/kk}