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

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Date of Decision: 04.12.2014

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MAC.APP. 664/2007

NIRVIGHAN DHIR & ORS

..... Appellant

Through

Thakur Sumit. Advocate

versus

MOHIT VERMA @ MONU & ANR

..... Respondent

Through

Mr.Tarkeshwar Nath and Mr.Saurabh
Kumar Tuteja, Advocates for R-3

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present appeal the appellant seeks to impugn the Award dated 17.5.2007 and seeks enhancement of compensation. The background facts that led to filing of the claim petition are that on 21.06.2000 the deceased Ravi Kant Dhir was returning to his house from Faridabad on his scooter. When he reached G-Block, Main Road, Sarita Vihar, New Delhi he was hit by a motorcycle driven rashly and negligently. He sustained grievous injuries. He remained admitted in Apollo hospital and thereafter was shifted to Holy family hospital. On 29.7.2000 succumbed to his injuries.
2. The controversy revolves around the amount of compensation assessed by the Tribunal. The Tribunal assessed the total compensation as Rs.2,15,000/- break up of which reads as follows:-

Loss of dependency	Rs.1,00,000/-
Medical expenses	Rs, 95,000/-
Funeral expenses	Rs. 5,000/-
Loss of consortium, love and affection	Rs.15,000/-
Total	Rs.2,15,000/-

3. Learned counsel appearing for the appellant submits that despite evidence on record to show that the deceased was earning Rs.10,000/- per month the Tribunal has rejected the evidence contrary to all canons of law and assessed the income of the deceased based on minimum wages for an unskilled worker which at the relevant time was Rs.2,500/-. It is submitted that the assessment of income is entirely erroneous. Reliance is placed on the evidence of PW-1 to PW-4 to show that the income of the deceased was Rs.10,000/- per month. It is next urged that the deceased had just crossed 60 years on the date of the accident and as per the judgment of the Supreme Court in *Smt.Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121* the multiplier to be used was 7 and not 5 as used by the Tribunal. It is next urged that non pecuniary damages have been awarded on the lower side. Reliance is placed on judgment of the Supreme Court in *Anjani Singh & Ors. vs. Salauddin & Ors., JT 2014 (7) SC 183* which is case of an accident which took place on 17.9.1997 and the Supreme Court awarded Rs.1 lac to the widow for loss of consortium. It is lastly urged that the Tribunal has awarded interest @6% per annum from the date of filing of the claim petition till realisation whereas it is urged that most judgments of Supreme Court say it should be 9% per annum.

4. Learned counsel appearing for the respondent No.3/Insurance Company submits that the computation of income based on minimum wages is in order keeping into account the records and the nature of evidence placed on record by the claimants.

5. Coming to the issue of assessment of income, a perusal of the award shows that the Tribunal noted the evidence of PW-1 the wife of the deceased, PW-2 former employer of the deceased where the deceased had

worked from 1985 till January 1996, PW-3 and PW-4 for whom the deceased was stated to be doing commercial work. The Tribunal, however, concluded that the appellants had failed to prove that the deceased was earning Rs.10,000/- per month, The Tribunal assessed the income as Rs.2,500/- per month based on minimum wages at the relevant time.

6. I may look at the evidence of the claimant. PW-1 Smt.Nirvighan Dhir the widow of the deceased in her affidavit by way of evidence in paragraphs 8 to 10 has said as follows:-

“8. I say that the deceased was highly qualified and had a meticulous academic record. The deceased matriculated in First Division in the year 1940 from Punjab University and thereafter he graduated from Punjab University and post-graduated from Lucknow University and also served as Secretary of the Lucknow University, History Association during the year 1960-61 and he was awarded a merit certificate to this effect. I have brought with me the originals of the said certificates and the copies thereof are Ex.PW1/34 to 1/37.

9. I say that the deceased had worked with M/s.Vinko Auto Industries Limited as Assistant Sales Manager. He joined the said company in the year 1985 and worked there till January, 1996. At the time of leaving the said job, he was drawing a salary of Rs.5500/- p.m. The salary certificate of M/s. Vinko Auto Industries Ltd. is Ex.PW1/38. The deceased also gave helping hand to his sons i.e. petitioners No.2 and 3 in their business and was actively looking after their said business.

10. I say that subsequently, the deceased also started his private job on commission basis and had worked with (i)M/s. Katyani Clutch Systems, NOIDA and (ii) M/s.Kamboj Electro Tech Pvt.Ltd. Noida. The commission vouchers/certificates of the aforesaid companies are Ex.PW1/39 to 1/44. The deceased got the following commission from the said companies for the period from April onwards till June, 2000.

M/s.Katyani Clutch Systems:

April

Rs.8477/-

May	Rs.2515/-
June	Rs.3000/-

M/s.Kamboj Electro Tech Pvt. Ltd.:

April	Rs.4230/-
May	Rs.8500/-
June	Rs.7500/-”

7. There is no cross-examination of the said witness on the said issue.
8. PW-2 Shri Jinesh Jain from Vinco Auto Industries Limited has confirmed that the deceased joined the company in 1985 as Assistant Sales Manager and resigned in 1996 and he was getting a gross salary of Rs.5,500/- per month. PW-3 Shri.Tilak Raj partner of M/s Katyani Clutch Systems and PW-4 Shri Mohd.Zaki Khan from. Kamboj Electro-Tech Private Limited have deposed that the deceased was doing commission work for their company and has exhibited the various commission certificates placed on record.
9. Keeping in view the work experience of the deceased and the fact that he is a graduate from Punjab University and Post Graduate from Lucknow University, in my opinion assessing his income based on the minimum wages for an unskilled labour was incorrect. It is true that the claimants have failed to place on record proper proof of payment in the form of bank statements and TDS certificates. However, the deceased is stated to be not an income tax assessee.
10. I assess the income of the deceased for the purpose of computing loss of dependency at Rs.5,000/- per month. Reference may be had to the judgment of the Supreme Court in the case of ***Kala Devi vs. Bhagwan Dass Chauhan, 2014 (12) Scale 513.***

11. As far as issue of multiplier is concerned, in view of *Sarla Verma vs. DTC (supra)* the multiplier of 7 would be the proper multiplier. Hence, loss of dependency would be Rs. 2,80,000/-(5,000 -1/3 x 12 x 7).
12. Coming to loss of consortium, keeping in view the judgment of the Supreme Court in *Anjani Singh & Ors. vs. Salauddin & Ors.(supra)* I enhance the compensation awarded for loss of consortium from Rs.15,000/- to Rs.1,00,000/-.
13. As far as interest from the date of filing the claim petition is concerned the interest is normally at the discretion of the Tribunal in terms of section 171 of the Motor vehicles Act, 1988. I see no reason to interfere with the Award of interest @6% per annum.
14. The total compensation would now read as under:-
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|--|----------------|
| Loss of dependency | Rs. 2,80,000/- |
| Medical expenses | Rs. 95,000/- |
| Funeral expenses | Rs. 5,000/- |
| Loss of consortium, love and affection | Rs. 1,00,000/- |
| Total | Rs. 4,80,000/- |
15. In view of the above, in my opinion, the compensation now awarded is just, fair and reasonable.
16. Respondent No.3/Insurance Company shall deposit the additional compensation amount alongwith accumulated interest @7.5% per annum from the date of filing the claim petition till deposit in Court with the Registrar General of this court within six weeks. The enhanced compensation amount be released to appellant No.1/Smt Nirvighan Dhir.
17. Appeal stands disposed of.

DECEMBER 04, 2014/n

JAYANT NATH, J.