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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 15th January, 2016

+ MAC.APP. 462/2010

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga & Mr. Pankaj
Gupta, Advs.

versus

SANJIDA BEGUM & ORS

..... Respondents

Through: Mr. O. P. Mannie, Adv. for R to
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CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company is in appeal questioning the award of compensation granted by the motor accident claims tribunal (“the tribunal”) by judgment dated 22.04.2010, on a petition under Section 166 & 140 of Motor Vehicles Act, 1988 (hereinafter referred to as “the MV Act”) registered as suit no.390/09, on the ground that the income of Mohd. Ishtiaq (the deceased), on account of whose death in motor vehicular accident on 06.08.2009 the claim petition was filed, has been wrongly assessed as ₹ 12,500/- per month and that in absence of formal or strict proof about level of income, the tribunal should have computed compensation on the basis of the minimum wages which, during the relevant period, were @ ₹4377/- per month for skilled workers.

2. Though in the appeal certain other grounds were also pleaded, at the hearing, it has been pressed restricted to the above issue only.
3. Heard both sides. Record perused.
4. Learned tribunal in the impugned judgment has set out the reasoning for computing monthly income of the deceased @ ₹ 12,500/- per month in the following words:

“As per PW1, the deceased was working as self employed dye maker and earning Rs.20,000/- per month out of which he was spending Rs.15,000/- per month on household expenses including the educational expenses of the children. However, no proof either of employment of the deceased or his income was brought on record. As regards, educational certificates of the unmarried daughters of the deceased i.e. Ex.PW-1/2 to Ex.PW-1/4 are concerned, they only show that she was studying in the school and also doing a diploma course in software programming. However, the expenses on her education have not been established. Ex.PW-1/5 is the provisional receipt issued in the name of Mehjabeen Khan which shows that she had been enrolled for some Government Sector course. What kind of course, she was pursuing is not elucidated, while Ex.PW-1/6 and Ex.PW-1/7 are only her mark sheets. The fee receipts Ex.PW-1/8 and Ex.PW-1/9 in the name of Mohd. Ishtiyak for the month of July and August 2009 show Rs.500/- were being incurred for his tuition fees. Again Ex.PW-1/10 and Ex.PW-1/11 are education certificates of petitioner Rehmat and Mohd. Ishtiyak which did not establish the monthly expenses on their education. However, PW-3 has established that petitioner Rehmat and Mohd. Saleem had joined his institute for pursuing hardware networking courses and that Rs.3,000/- per month had been paid for three months and after three months, they left the course in between. Electricity bill and water bill is admittedly not in the name of the deceased. From the documents that had been brought on record, one thing stands

proved that the unmarried children of the deceased were pursuing their further professional course for which Rehmat and Mohd. Saleem were incurring the expenses of ₹3,000/- per month. However, it was admitted by PW-1 that Mohd. Saleem and Rehmat were now working and therefore it does not stand established convincingly that the entire expenditure was being borne by the deceased. However, keeping in view the entire facts and circumstances of the case and that petitioner no.2 to 7 were unmarried, it can reasonably be assumed that the entire educational expenses of the minor children would be borne by the deceased, though he would be contributing in part for the education/coaching of major sons also. From the entire facts and circumstances of the case, it would be reasonable to presume that deceased was having monthly income of about ₹12,500/- per month.”

5. On careful assessment, I find no error in the view taken by the tribunal. Whilst it is true that the claimants failed to come up with any formal proof about the actual income, I agree with the submissions of the learned counsel appearing on their behalf that there cannot be a thumb rule that in all cases where strict proof of income is not forthcoming, the tribunal or the court will be left with no option but to go by the minimum wages prevailing at the relevant point of time. The facts and circumstances brought out would have to be seen in entirety. It has been proved on record that the family of the deceased included the widow and six minor children, besides four daughters already married and settled in their respective matrimonial homes. The evidence also clearly showed that the deceased was concerned about the proper settlement of his children in appropriate avocations with which objective he had arranged for their proper education in various institutes. Thus,

he is shown to have been investing in their education by arranging for payments of the requisite fee to be paid. The expenses incurred towards such pursuits by the deceased also reflect that the earnings that would have been coming his way as a self employed dye maker could not possibly be so low as at the level of minimum wages.

6. In view of the facts and circumstances, the appeal is found devoid of substance and accordingly dismissed.

7. The statutory amount, if deposited, be refunded.

8. By order dated 09.08.2010 on CM no.12984/10, 50 % of the award amount was released in terms of the impugned award, the balance having been kept in fixed deposit in nationalized bank through Registrar General of this court. The balance amount with accrued up-to-date interest shall be now released by the Registrar General to the claimants in terms of the impugned award.

**R.K. GAUBA
(JUDGE)**

JANUARY 15, 2016/ssc