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

Date of Decision: 03rd March, 2016

+ **MAC.APP. 896/2012**

NAJMA KHATOON & ANR Appellant

Through: Mr. O. P. Mannie, Adv.

versus

ARJESH KUMAR & ORS Respondents

Through: Mr. J. P. N. Shahi, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellants were the claimants before the motor accident claims tribunal (the tribunal) in MACT petition no.1134/2010 which was decided by judgment dated 09.04.2012 whereby compensation in the sum of ₹4,83,352/- with interest at the rate of seven & half percent (7.5%) per annum was granted on account of death of Mohd. Wasim in a motor vehicular accident that occurred on 06.03.2010 involving tempo bearing registration no.DL-1LK-1593 concededly insured against third party risk with the third respondent herein. The compensation awarded included loss of dependency calculated at ₹4,43,352/- on notional income of ₹5278/-, it being the minimum wages payable to an unskilled workman during the relevant period, worked out on the multiplier of 14 on the basis of the

mother (43 years), the deceased being a bachelor. The tribunal also awarded non-pecuniary damages in the sum of ₹25,000/- towards loss of love & affection, ₹10,000/- on account of loss of estate and ₹5,000/- towards funeral expenses.

2. The claimants are aggrieved on the ground that the evidence about income of the deceased from his private service as a compounder in clinic of a doctor was rejected. In the alternative, it is claimed that the minimum wages of non-matriculate worker should have been adopted and the loss of dependency should have been worked out on the basis of age of the deceased (21 years) rather than that of the surviving mother. The claimants further submitted that the award on non-pecuniary damages is on the lower side.

3. The evidence regarding private employ was considered by the tribunal but rejected setting out the following reasons:-

“PW-3 Dr. Virender Singh deposed that deceased Mohd. Wasim Ahmed was working in his clinic as compounder cum Medical assistant since 2006 and he was paying the deceased Rs. 9000/-per month as salary. PW-3 further stated that Ex.PW-1/5 was issued by him. During cross-examination PW-3 Dr. Virender Singh stated that he had not brought the document/ proof of his qualification as stated in the certificate Ex.PW-1/5. His clinic was not registered with any institution and stated that clinic was not required to be registered only nursing homes were required to be registered. PW-3 further stated that he had not issued any appointment letter to the deceased. He had not brought any register/ book showing the deceased as his employee. Sh. Wasim Ahmed (deceased) did not have any professional qualification for job of compounder cum medical assistant. PW-3 further stated that he had not got registered Mohd. Wasim as his employee before any-statutory authority and used to pay Mohd.

Wasim in cash and have not issued any receipt for the said payment. PW-3 stated that he was not having bank statement showing payment to Sh. Wasim and he did not mention the said income to his ITR.

I have gone through the material on record. The petitioners have filed a certificate Ex. PW-1/5 to show that deceased was working as a compounder with Dr. Virender Singh and was earning Rs. 9000/- per month. PW-3 Dr. Virender Singh although stated that he was a doctor and has employed Sh. Wasim as compounder cum assistant but failed to produce any documents with regard to the employment of Mohd. Wasim. PW-3 had stated that he had not issued any appointment letter to the deceased nor he was having any register or book showing that Mohd. Wasim was his employee. PW-3 has not got registered Sh. Wasim as employee before any statutory authority. PW-3, Dr. Virender Singh has failed to produce any document with regard to the payment made to the deceased. PW-3 did not mention the payment made to Mohd. Wasim in his income tax return. PW-3 failed to produce any document regarding running of his clinic or payment made to the deceased. Under these facts and circumstances and in the absence of any documentary proof it cannot be said that deceased was working with PW-3 Dr. Virender Singh. The testimony of PW-3 is not reliable.

In the absence of any material on record, the minimum wages at the time of accident for a unskilled person as prevailing in N.C.T. can be taken into consideration for calculating the compensation. The minimum wages at the time of accident for a unskilled workman were Rs. 5278/- per month. No further amount can be added to the said amount towards inflation as held in the judgment "Dhaneshwari &Anr vs Tejeshwar Singh &ors." MAC App 997/2011, passed by Hon'ble High Court of Delhi."

4. This court agrees with the reasons cited by the tribunal in rejecting the evidence about the private employment and instead adopting minimum wages of an unskilled worker. Since no cogent evidence was led before the tribunal as to the nature of avocation, it cannot be said that he has to be treated as a clerical, non-technical or supervisory staff so as to entitle to be considered under a category other than an unskilled workman.

5. It is well settled that the multiplier has to be adopted as per the age of the deceased or the claimant whichever is higher [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362; *New India Assurance Co. Ltd. vs Charlie* AIR 2005 SC 2157; *New India Assurance Co. Ltd. vs Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1; *Ramesh Singh & Anr. vs Satbir Singh & Anr.* (2008) 2 SCC 667; *National Insurance Company Ltd. vs Shyam Singh & Ors.* (2011) 7 SCC 65; *Ashwinbhai Jayantilal Modi vs Ramkaran Ramchandra Sharma & Anr.* (2015) 2 SCC 180].

6. Thus, there is no error found on the award of loss of dependency.

7. There is, however, substance in the grievances about the non-pecuniary damages. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, this court is inclined to award ₹1,00,000/- on account of loss of love & affection and ₹25,000/- each on account of loss of estate & funeral expenses. Thus, the compensation awarded by the tribunal requires to be increased by ₹1,10,000/-. Ordered accordingly.

8. This court finds merit in the contention that the rate of interest levied by the tribunal is lower than what should have been granted. Following the consistent view taken by this court, rate of interest is increased to nine percent (9%) from the date of filing of the petition till realization (see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*).

9. The entire enhanced portion of the compensation shall be payable to the first appellant (the mother of the deceased) and shall be put in fixed deposit receipt in her name for a period of 10 years in a nationalized bank of her choice with right to draw monthly interest.

10. The insurance company is directed to deposit the enhanced compensation in terms of these directions with the tribunal within 30 days whereupon it shall be released.

11. The appeal is disposed of in above terms.

MARCH 03, 2016
ssc

R.K. GAUBA
(JUDGE)

