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

+ MAC.APP. 1145/2014

PHOOL KUMARI DEVI & ORS

..... Appellant

Through Mr. O P Gupta, Adv.

versus

PHAGUN & ORS (NATIONAL INSURANCE COMPANY LTD.)

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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29.02.2016

1. Surinder Mehto suffered injuries in a road traffic accident on 24.10.2012 and died in the consequence. His mother, son and daughter brought the claim petition under section 166 and 140 of Motor Vehicles Act, 1988 (MV Act) which was registered on 22.11.2012 as MAC petition case No.9/2013 impleading the driver, owner and insurer of Maruti Alto car bearing No.DL 5CF 1990 (the car) which had allegedly caused the accident colliding against three wheeler scooter (DL 1RK 1987) driven by the deceased at the relevant point of time. The Tribunal, after inquiry, granted the sum of Rs.13,26,652.80 as compensation in favour of the claimants (appellants) with interest at 9% per annum from the date of filing of the petition till realisation.

2. The claimants are in appeal raising the solitary grievance that the income of the deceased has been wrongly assessed at Rs.8,814/- per month thereby inadequately compensating for the loss of dependency. It is

contended that Mukesh Kumar (PW2) one of the claimants (son of the deceased) had affirmed on oath that the deceased was working as a driver of TSR and earning Rs.15,000/- per month. The Tribunal, however, did not accept the said evidence and instead adopted Rs.8,814/- per month as the notional income on the basis of minimum wages payable to a skilled workman. It is the contention of the appellant, founded on view taken by a learned Single Judge in *Poonam Devi v. Birju Yadav* (MAC.APP.No.616/2009) decided on 20.04.2012 that income of TSR driver should have been assessed at a higher level.

3. Having heard both sides, this Court does not find any merit in the appeal. The view taken in *Poonam Devi* (supra) was in the facts and circumstances of the said case. There cannot be a thumb rule that TSR driver would invariably earn more than a person in any other avocation. In absence of formal proof corroborating the claim that the deceased was earning in the range of Rs.15,000/- per month, the Tribunal adopted the minimum wages of the skilled worker, and rightly so.

4. The appeal is unmerited and is dismissed *in limine*.

R.K.GAUBA, J

FEBRUARY 29, 2016
VLD