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

% Judgment delivered on: 22.05.2017

+ **MAC.APP. 302/2016**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Anshum Jain and Mr. Amol Sihna,
Advs.

versus

DINESH DEVI & ORS Respondents
Through: Mr. S.N. Parashar, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The Award dated 24.02.2016 has been impugned on the ground that minimum wages as applicable in Delhi were taken into consideration instead of the minimum wages of Uttar Pradesh (U.P.), since it was the normal place of residence of the deceased. Ordinarily this argument would be tenable only if it was shown that the deceased was a resident of U.P. However, the residence of the deceased is shown in Delhi i.e. House no. D-691, Gali No. 1, Ashok Nagar, Delhi, as claimed in the claim petition. The Court is not to see whether the person owned the premises. All that is to be seen is the place of residence. Interestingly, the deposition of the landlord of the above premises Mr. Shishpal was at the behest of the insurer. In so far as the owner of the premises has deposed that the deceased was his tenant, there would be no reason to doubt the same. In the circumstances, the

computation on the basis of the minimum wages applicable to Delhi cannot be faulted.

2. The other ground of challenge is that: (i) contributory negligence of the deceased i.e. the rider of the motor cycle, should have been considered by the Tribunal as four people instead of two were riding on the motor cycle, i.e. the rider, another adult and two minor children, and (ii) the deceased was not wearing a helmet since the post-mortem report reveals that there was a blunt injury on his head.

3. The Court is unable to agree with the said contentions because the offending insured vehicle was being driven on the wrong side i.e. the motor cycle was on the correct side of the road i.e. the left side, but its rider was crushed by the offending vehicle which was being driven negligently. The contention apropos the deceased not wearing a helmet was never raised before the Tribunal during the trial, it cannot be raised now. The DAR/ documents regarding the accident do not state that the victim was riding the motor cycle without a helmet, nor did the driver of the offending vehicle give a statement that the deceased was not wearing a helmet. Indeed the driver of the offending vehicle was never examined. Therefore, the aforesaid contentions are rejected.

4. The learned counsel for the appellant lastly submits that the Tribunal has awarded interest at the rate of 12% instead of the usual rate of 9%. In ***Municipal Corporation of Delhi, Delhi vs. Association of Victims of Uphaar Tragedy and Ors. AIR 2012 SC 100*** the Supreme Court had granted interest at the rate of 9% for an accident which happened in 1998. This Court has consistently granted interest at the rate of 9% in a number of cases. Accordingly, the awarded amount shall carry an interest rate of 9%

instead of 12%. The impugned Award is modified accordingly.

5. The statutory deposit be refunded to the appellant. The computed amount along with interest at the rate of 9% be released to the respondents. The appeal is disposed off in the above terms.

NAJMI WAZIRI, J

MAY 22, 2017/kk

