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

\+ MAC.APP. 1076/2016 & CM No. 46804/2016

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Himanshu Gambhir, Adv.

versus

RUKSANA & ORS ..... Respondents
Through

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 15.05.2017

The petitioner has impugned the Award *inter alia* apropos computation of monthly income i.e. Rs. 5,000/- per month instead of Rs. 3953/- per month. It is argued that the non-pecuniary compensation granted are on the higher side.

The Court is of the view that the loss of consortium and the loss of love and affection at the rate of Rs. 1.25 lacs each is an appropriate amount and does not call for any interference. Similarly, the amount of Rs. 35,000/- each awarded towards (i) loss of estate and (ii) funeral charges also do not call for any interference[1]. .

As regards the challenge towards computation of monthly income being on the higher side, the Court is of the view that the Tribunal has considered the fact that the minimum wages were revised merely 20 days after the demise of the injured. The minimum wages are an indicator of roughly the amount which a person will be getting for employment on a daily basis i.e. the wages cannot be lesser than the notified wage. The

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[1] ***Kalpanaraj & Ors. vs Tamil Nadu State Transport Corporation 2014 (5) SCALE 479***

notification of the revised wages by the statutory authority takes some time. It is based upon the data of the previous 8 to 10 months hence the realistic wages although notified later, would be what formed the basis of the upward wage revision. A few days delay in the notification of the minimum wages would not obliterate the reality of the markets. Hence the Tribunal has rightly granted the wages at Rs. 5,000/- as on the date of the demise instead of that which was notified 20 days later. The Court finds that the award of Rs. 5,000/- is a realistic and just compensation. In ***United India Insurance Co. Ltd. Vs Reeta Devi 2009 ACJ 1229***, this Court observed as follows:

> *".....Further, the Claims Tribunal is expected to fix such compensation which may appear to it to be just. 'Just' compensation would mean 'reasonable' compensation for the injury caused in an accident resulted due to negligence of a motorist, including the driver of the bus. So, 'just' would mean appropriate, equitable, or proper. It signifies that the compensation amount should be so assessed as to make provision for the legal representatives of the deceased to receive or earn such pecuniary benefits as they could have obtained from the deceased if he had lived his normal life. The grant of compensation amount, which would enable the legal representatives of the deceased to earn more pecuniary benefit than one that had been available to them from the deceased during his lifetime, would not be proper and grant of compensation amount which would not enable such legal representatives to earn as much pecuniary benefit as was available to them from the deceased during his lifetime, would not be equitable....."*

Furthermore, in MAC.APP. 981/2015 titled ***The Oriental Insurance Co Ltd vs. Suman and Ors.*** decided on 09.08.2016, this Court held as under:

> *"4. The Claims Tribunal has taken the minimum wages of Rs.3,589.90 and after adding 50% towards the future prospects,*

the total income of the deceased has been taken as Rs.5,384.85 (Rs.3589.90 + Rs.1,794.95). This Court is of the view that the occupation of the deceased as a professional driver having been sufficiently proved, the income of the deceased can be safely presumed as Rs.5,384.85 per month even if future prospects are not awarded. <u>*It is not mandatory to resort the minimum wages in each and every case.*</u>(emphasis supplied) *Reference in this regard may be made to the judgment of the Supreme Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100 in which 59 persons died in Uphaar tragedy and the Supreme Court granted compensation of Rs.10,00,000/- to the victims of above 20 years of age and Rs.7,50,000/- to the victims below 20 years of age on the basis of multiplier method. The Supreme Court applied the multiplier of 15 and deducted 1/3rd towards the personal expenses. The income of the victims aged more than 20 years was assumed to be Rs.8,333/- per month and that of victims aged less than 20 years was assumed to be Rs.6,249/- per month. The computation of the compensation awarded by the Supreme Court would be as under :-*

<u>*For victims aged more than 20 years:-*</u>

(Rs.8,333/- less 1/3rd)x 12 x 15 = Rs.10 lakhs.

<u>*For victims aged less than 20 years:-*</u>

(Rs.6249/- less 1/3rd) x 15 = Rs.7.5 lakhs.

5. It is relevant to note that the Uphaar tragedy took place on 13th June, 1997 and the minimum wages at the relevant time were less than Rs.2600/-. Although there was no proof of the income of the victims, the Supreme Court did not find it proper to apply the minimum wages.

6. This Court has applied the principles laid down in Uphaar tragedy case to compute the compensation in United India Insurance Co. V. Kanwar Lal, 2012 SCC Online Del 2411, New India Assurance Co. Ltd. v. Bal Kishan Pawar, 2012 SCC Online Del 3201, National Insurance Co. Ltd. v. Chander Dutt, 2012 SCC Online Del 2412, National Insurance Co. Ltd. v. Sewa Ram, 2012 SCC Online Del 2413 and National Insurance Co. Ltd. v. Komal, 2014 ACJ 1540, National Insurance Co. Ltd. v. Gaje Singh, 2012

ACJ 2346 and National Insurance Co. Ltd. v. Bhateri, 2012 SCC Online Del 2409.

7. Applying the principles laid down in Uphaar tragedy case, the income of the deceased is presumed to be Rs.5,384.85...."

In these circumstances, the Court does not find any reason to interfere with the impugned Award. Accordingly, the appeal is dismissed.

NAJMI WAZIRI, J

MAY 15, 2017/kk