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

% *Decided on: 23.07.2019*

\+ **MAC.APP. 506/2019 & CM No.19902/2019**

GEETA RATHOR & ORS. ..... Appellants

Through: Mr. R. K. Sonkiya, Advocate.

Versus

THE ORIENTAL INSURANCE COMPANY LTD & ORS ..... Respondents

Through: Mr. Pradeep Gaur, Advocate for Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM No.19902/2019 (for delay)

1. The delay of 236 days in filing the appeal is stated to be explained on the ground that the certified copies which the appellants had obtained were misplaced; hence, the entire exercise had to be undertaken all over again. The learned counsel for the appellants submits that the appellant no.1 is an illiterate person and is not well-versed with the process of Courts.

2. In view of the above and for the reasons mentioned in the application, the delay is condoned. The application stands disposed-off.

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3. Issue notice.

4. Mr. Pradeep Gaur, the learned counsel accepts notice on behalf of the Insurance Company.

5. At joint request, the appeal is taken up for final disposal.

6. The appellants impugn the award on the ground that it is on the lower side, in particular, the computation of 'loss of dependency' on the basis of minimum wages applicable to a skilled worker. The appellants had claimed that the deceased was a driver and was working with Ms. Poonam and earning Rs.6,000/- per month. Additionally, it was also claimed that the deceased was earning Rs.2,000/- per month by working part-time as a Security Guard with Anmol Jeevan Network at Azadpur, Delhi. Neither of these two claims was proven by way of any evidence. The learned Tribunal found that the testimony of PW2 – Arun Kumar, a co-worker, was unable to prove that the deceased was working part-time as a security guard. Therefore, mere statement of Arun Kumar was not sufficient proof to establish that the deceased was earning the aforesaid amount.

7. Furthermore, Ms. Poonam, the so-called employer, who was allegedly paying Rs.6,000/- per month to the deceased was not examined. In the absence of above, nothing was proven apropos the claim of the appellants that the deceased was earning Rs.8,000/- per month. In the circumstances, while computing the 'loss of dependency', the learned Tribunal considered the monthly salary of the deceased to be Rs.4,377/- per month in terms of the minimum wages, of skilled labour, at the relevant time. The reasoning and the conclusion on this count cannot be faulted.

8. The next argument by the appellants is that limiting compensation for loss of estate at Rs.15,000/- is erroneous and it would be Rs.1 lacs looking at

the status of the parties. The contention is untenable in view of the judgment of the Supreme Court in ***National Insurance Company vs. Pranay Sethi 2017 ACJ 2700*****,** in particular, para 61(viii), which has held that for the loss of estate, compensation of Rs.15,000/- would be payable. Therefore, this argument too is dismissed.

9. The impugned order has awarded 'loss of consortium' of Rs.40,000/- only to the widow of the deceased. The appellants seek the same relief for each of them, as well as compensation for 'loss of love and affection', which has not been awarded to them. In ***SLP No. 3192 of 2018, Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.***, decided on 18.09.2018 the Supreme Court awarded Rs. 40,000/- as 'loss of consortium' to each of the dependants of the deceased, and further upheld the order of the High Court, awarding an additional Rs. 50,000/- to each dependant of deceased towards 'loss of love and affection'. The same principle shall be applied to the present appellants as well. Accordingly, they are each awarded Rs. 40,000/- and Rs. 80,000/- towards 'loss of consortium' and 'loss of love and affection' respectively.

10. The learned counsel for the appellants states that non-grant of interest to the claimants for the period from 26.04.2013 to 22.05.2015 too is erroneous and needs to be set aside because the time taken in disposal of an application seeking impleadment of a relevant party cannot be to the detriment of the appellants.

11. By order dated 24.08.2018, the learned Tribunal had inter-alia held as under:-

“ Heard on the application U/s 151 and 152 of CPC filed on behalf of the insurance company.

Reply to the aforesaid application has been filed today on behalf of the non-applicant/petitioner. Be taken on record. Copy supplied.

By the present application, the applicant/insurance company is seeking correction in the award dated 04.05.2018 whereby an award in the sum of Rs. 6,82,870/- was passed in favour of the petitioner and against the applicant/insurance company including interim award alongwith interest (a) 9% per annum from the date of filing the claim petition i.e. 19.02.2010 till realization by this tribunal and the directions has been given to the applicant/insurance company to deposit the awarded amount within 30 days, it is also stated in the said application that while calculating the awarded amount, this tribunal has not considered the order dated 26,04.2013 whereby the Ld. Predecessor of this tribunal has held that the petitioner shall not be entitled to interest from today i.e. 26.04.2013 till she steps into witness box.

It is further stated in the application that petitioner has filed her evidence by way of affidavit on 22.05.2015 and her evidence was recorded on 10.11.2017 and in between the petitioner has filed the application U/o 1 rule 10 of CPC for impleadment of Smt. Saroj Devi as respondent but the said application has not been disposed of as submitted by the counsel for the petitioners. Therefore, it is prayed by the counsel for the applicant/insurance company that award dated 04.05.2018 may kindly be corrected and the interest from 26.04.2013 till 10.11.2017 may kindly be ordered to be waived off.

I have perused the case file. On perusal of the order dated 26.04.2013 passed by the Ld. Predecessor of this tribunal, it reveals that petitioner shall not be entitled to interest from 26.04.13 till petitioner steps into witness box. I have also perused the order dated 22.05.2015 which reveals that an evidence by way of affidavit filed on behalf of petitioner Smt. Geeta Rathore and the submission was also made by the counsel for the insurance company on the same day that a similar petition for claiming compensation regarding death of deceased has also been filed in the courts at Etaa, U. P. and the petitioner sought time to apprise the court in this regard and the matter was adjourned for further proceedings for 14.08.2015. On 14.08.2015, the court was on leave and the case was adjourned to 04.12.2015. Meanwhile an application under order 1 rule 10 of CPC was filed on 23.09.2015 on behalf of the petitioner thereby seeking impleadment of Smt. Saroj Devi as respondent in the present matter. Thereafter, the case was continuously pending for the purpose of impleadment of Smt. Saroj Devi as respondent in the present case and order sheet dated 28.07.2017 is reflecting that the petition filed by Smt. Saroj Devi i.e. sister of deceased has been dismissed by the Ld. MACT Etta, U. P. vide judgment dated 17.09.2012 and the certified copy of the said judgment was also placed on record by the petitioners. Thereafter, the case was adjourned for PE for 10.11.2017.

On 08.11.2017, the present case was transferred to this court in pursuance of the order dated 20.09.2017 passed by the Ld. District & Sessions Judge, North-West District, Rohini Courts, Delhi.

On 10.11.2017, Petitioner was examined as PW-1 and she was cross examined by the counsel for the applicant/insurance company.

In view of the over all facts and submissions made by the counsel for the parties, the application U/s 151 and 152 of CPC is allowed and it has been held that ***petitioner shall not be entitled to the interest from 26.04.2013 till 22.05.2015 i.e. date of filing an affidavit of evidence by the petitioner. Award dated 04.05.2018 is corrected accordingly. Rest of the award shall remain as it is.***

Counsel for the petitioners who had moved the application u/o 1 rule 10 of CPC for impleadment of Smt. Saroj Devi submits that he is not pressing the aforesaid application and prayed that same may kindly be dismissed. Hence, the application u/o 1 rule 10 of CPC is dismissed being not pressed.

File be consigned to Record Room.

Copy of this order be also placed in case Misc. DJ 377/18 titled 'Geeta Rathore & others Vs. Rambir Singh & Others.

Copy of this order be also provided to the parties."

12. From the above, what emanates is that after the learned Tribunal had ordered on 26.04.2013 that the claimants would not be entitled to any interest from that day onwards till she i.e. claimant no.1 – the widow, steps into the witness box. Therefore, it was for her to lead evidence, which she did not do for more than two years. The learned Tribunal noted that the claimants had moved an appropriate application in this regard only on 23.09.2015, therefore, quite rightly, interest was denied to her for the period

26.04.2013 till 23.09.2015. The Court finds no reason to interfere with the reasoning and conclusion.

13. Let a fresh computation be done by the Insurance Company and the computed monies be deposited before the learned Tribunal within four weeks from receipt of this order for disbursal to the beneficiary(s) in terms of the scheme of disbursement specified in the Award.

14. A copy of the computation and proof of depositing the enhanced compensation shall be intimated to the learned counsel for the appellants.

15. In view of the above the appeal, alongwith pending application, stands disposed-off.

NAJMI WAZIRI, J.

JULY 23, 2019
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