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

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Decided on: 27.08.2019

+ MAC.APP. 649/2019, CM APPL. 30087/2019, CM APPL. 30088/2019 & CM APPL. 30089/2019

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. Pradeep Gaur, Advocate.

versus

NEERU SHARMA & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 30088/2019 (for Delay)

1. This application seeks condonation of delay of 25 days in filing the appeal.

2. For the reasons mentioned in the application, the delay is condoned. The appeal is taken on record.

3. The application stands disposed-off.

CM APPL. 30089/2019 (for Exemption)

4. Allowed, subject to all just exceptions.

5. The application stands disposed-off.

6. This appeal impugns the award of compensation dated 11.03.2019 on the ground that there was no evidence apropos employment and salary of the deceased was led.

7. The learned counsel for the appellant refers to the evidence of Mr. Kapil Garg, PW-4, who had brought details of the records of payment made apropos the four salary slips for the months of June to September, 2016 and the payment details with supporting certificate under section 65B of the Indian Evidence Act, 1872. In his cross-examination, he had stated as under:-

“XXXXXXX by Sh. Ashok Popli, Advocate for respondents no. 1 and 2.

M/s Premium PC Solutions Pvt. Ltd. used to maintain the account and other record in computer. I was not operating the computer whereas accountant used to operate the same. I have not brought any record to show the qualification of Mr. Rachit Sharma. I do not know whether the employer used to deduct the income tax from the salary of the employee. I have no knowledge whether Form-16 under IT Act was issued to the deceased. The company is not in existence as on date as it was closed on 13.10.2016. I joined the company in July-2015. Mr. Rachit Sharma joined the company after me. I am not sure. There was attendant register of the company, which was being maintained bio metric. I have not brought any record regarding

attendance etc. The detail as given in pages no. 6 & 7 of Ex. PW4/1 do not contain the name of deceased. The same pertains to the payment made in the bank of the deceased. I was not remitting the payment in the bank. The incentives of the team was deposited in the account of Mr. Rachit Sharma, being team Leader used to distribute the amount of incentives to his team members. The payment towards salary used to be paid by transfer in the bank account of the employees. It is wrong to suggest that the salary slips are fabricated and that the deceased was not getting the salary as mentioned in these salary slips. It is wrong to suggest that I have deposed falsely and the record produced by me is manipulated.

XXXXX

XXXXX

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XXXXXXXX by Ms. Aditi Chopra, proxy counsel for Sh. Harish Kumar, Advocate for Ins. Co.

It is wrong to suggest that the documents brought by me are false and fabricated and filed in collusion with the petitioner. (Rest I adopt the cross examination of witness conducted by Ld. Counsel for respondents no. 1 and 2).

RO & AC.”

(emphasis supplied)

8. The learned counsel for the appellant submits that sufficient material was not produced, and therefore, the learned MACT erred in concluding the quantum of salary, which was taken into consideration as the basis of the

award of compensation. He states that the accident happened on 04.10.2016 and the company closed down nine days later on 13.10.2016.

9. However, the Court would note that the aforesaid deposition was recorded on 18.12.2018 i.e. approximately twenty-six months after the closure of the company. What was required to be produced was the proof of payment of the monies to establish the payment of salary which was paid to the employee through banking transaction. The claimants witness, the erstwhile co-employee at M/s Premium PC Solutions Pvt. Ltd. had denied the suggestion that the salary slips were fabricated or that the deceased was not getting the monies as per the salary slips. To that extent, he had established that the salary was indeed paid to the deceased as claimed.

10. In this regard, the impugned order has held as under:-

“3. Contending that said accident took place due to rash and negligent driving of offending vehicle by Mr. Anmol Bahal (respondent no. 1), offending vehicle was owned by Mr. Jeewan Mohan Bahal (respondent no. 2) and insured with United India Ins. Co. ltd. (respondent no. 3), petitioners claimed a sum of Rs. 80 lacs as compensation from the respondents along with interest @ 18% per annum from date of filing claim petition, till realization of amount. An Interim award of Rs. 50,000/-- has also been prayed for.

10. Petitioner has examined PW4, Mr. Kapil Garg, who proved the salary slips of victim for the month from June-2016 to September-16

supporting with certificate under Section 65B of Indian Evidence Act collectively Ex. PW4/1. Though this witness has been examined at length, but nothing material has come to disbelieve testimony, of this witness. Therefore income of the victim is taken as per last drawn salary i.e. salary slip of September -2016 after deduction 10% standard income tax for the purpose of calculation of future income and keeping in view, documents available and proved on record, a total compensation of Rs. 95,32,000/- which includes 21 months interest @9% per annum, is awarded to the petitioners, details of which are mentioned in the above proforma.”

11. The testimony led by the appellant has established that the salaries as claimed, were being paid to him. Therefore, the same being taken as the basis for the computation of the compensation cannot be faulted with.

12. There is no merit in the appeal. It is accordingly dismissed.

13. Statutory amount, alongwith interest accrued thereon, be refunded to the insurance company.

NAJMI WAZIRI, J.

AUGUST 27, 2019

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