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

% **Date of Decision: 16.04.2019**

\+ MAC.APP. 424/2018 & CM APPL.17799/2018

NEELAM KUMARI & ORS ..... Appellants
Through Mr. R.N. Sharma and Mr. Trivedi Prafulla, Advs.

versus

SIDHARTH JAIN & ANR (FUTURE GENERAL INDIA INSURANCE CO LTD) ..... Respondents
Through Mr. Vikas Lakra, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE A.K.CHAWLA

<u>J U D G M E N T</u>

<u>A.K.CHAWLA, J. (ORAL)</u>

1. By the instant appeal, the appellants-claimants assail the quantum of compensation that has come to be awarded to them by MACT, Shahdara, on account of death of Mr. Sushil Kumar Malhotra in short 'the deceased', on account of fatal injuries sustained by him in the motor accident involving car bearing registration no. DL 8C AW 7751, whose insurer is the contesting respondent No.2-Future General India Insurance Company Ltd. In view of the fact that the question agitated in the appeal is restricted to quantum of compensation only, the advertence to the other factual aspects to maintain the claim petition before the Tribunal, is not called for.

2. Mr. Sharma, ld. Counsel for the appellants strenuously contends that the deceased was running a business of Cello tapes and also filing Income Tax Returns, and, that, for the last few years, prior to the occurrence of the accident, the ITRs were verified by the police and placed before the Tribunal, but, the Tribunal simply ignored the material so adduced on record. In his submissions, when the police had verified the filing of the ITRs for the last few years prior to the occurrence of the accident, ignoring such ITRs, to assess the loss of income/dependency of the appellants/ claimants and applying minimum wages of a Skilled Graduate Worker, was not justifiable. The Tribunal has assessed the income to award compensation under the head of loss of income/dependency, with observations made in para 15, as follows :

> *"After deciding the age and multiplier, the income of the deceased has to be determined. The deceased was self employed and stating to be running a cello tape business but petitioners have not proved any document to this effect. They have alleged that the earning of deceased was Rs. 50,000/- pm and ITRs for three financial years of the deceased have been proved to prove this earnings, but these ITRs have failed to prove this earning as the last two ITRs were filed by the wife of the deceased i.e. petitioner No. 1 without supporting any document to substantiate this earning. Even no witness from the tax department has been examined to prove these ITRs. As such, these ITRs have failed to prove the earnings of the deceased. However, deceased was graduate and also diploma holder in Air Conditioning and Refrigeration due he was a skilled man and must be earning at least as per minimum*

> *wages for skilled worker prevalent in Delhi the year 2015. The minimum wages in April, 2015 in Delhi was Rs. 11,986/- for skilled and graduate worker and he is entitled for such earning to calculate this compensation. As such, annual income of deceased comes to Rs. 11,986* x *12= Rs. 1,43,832/-."*

Nothing comes to be stated on behalf of the respondent-the insurer that the deceased was not running a business or that, the ITRs for the previous years prior to the occurrence of the accident were either forged or fabricated or any doubt of their genuineness, could be raised. Of course, that is only one aspect of the matter. Whether the ITRs *ipso facto* would be sufficient to assess the income in the absence of any assessment order on the ITRs so filed, of course, would be open to be considered. In the given facts and circumstances, lest, miscarriage of justice occurs in assessment of fair and equitable compensation, it is considered appropriate to remand the matter back to the Tribunal to grant further opportunities to the appellant to lead cogent evidence to prove the actual income or the close approximation thereof, taking into account the fact that the deceased at the time of accident was running a business, which is not disputed to on behalf of the respondents.

3. In view of the foregoing, the appeal is accepted and the matter is remanded to the limited extent of re-assessment of quantum of compensation. Parties are directed to appear before the Tribunal on 06.05.2019, when, the Tribunal shall proceed to offer reasonable opportunities to the appellants to lead cogent evidence to prove the income of the deceased and then, afford reasonable opportunities to the respondent-

the insurance company to lead their evidence in defence, and, thereafter, also give opportunities to lead evidence to the appellants in rebuttal, if, so desired. Having done so, the Tribunal shall then return its findings afresh on the quantum of compensation.

4. Appeal stands disposed off accordingly.

A. K. CHAWLA, J

APRIL 16, 2019
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