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

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Decided on: 16.07.2019

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MAC.APP. 1163/2018

BABU & ORS.

..... Appellants

Through: Mr. Partap Singh, Advocate.

Versus

VIKAS DUGGAL & ORS (THE NEW INDIA ASSURANCE CO LTD)

..... Respondents

Through: Mr. D. K. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellants are aggrieved by the quantum of compensation awarded on account of the unfortunate loss of life of a young boy of 22 years. While calculating the “loss of dependency” for the motor accident fatality, the learned Tribunal has taken into consideration the minimum wages applicable to an unskilled worker in Uttar Pradesh at the relevant time. It has reasoned as under:-

“11. As far as the income of the deceased is concerned, PW-1 has stated that the deceased was selling Dari and Bed Sheets and earning Rs. 15,000/- p.m. During cross-examination he stated that the deceased was working in Delhi. He used to sell mats and bed sheets on his cycle. He was working for the last five years. He was doing his own business. In the present case the petitioners have not filed any documentary evidence to

show that the deceased Bablu was working in Delhi and he used to earn Rs. 15,000/- p.m. The documents filed by the petitioners show the address of the deceased as of Moradabad, Uttar Pradesh. Moreover, it is not possible that a person who is a resident of Moradabad daily come on cycle to Delhi for selling mats and bed sheets and go back to Moradabad in the evening. Therefore, this Court has no option but to take the minimum wages of Uttar Pradesh which on the date of accident were Rs. 7,108/- p.m.”

2. It is the appellants’ case that the impugned order has erred by taking the minimum wages applicable to an unskilled worker in Uttar Pradesh at the relevant time, because it is a matter of record that the deceased was working in Delhi, so was his cousin Majid Ali, who had lodged the First Information Report (FIR). In his complaint to police, which was converted into an FIR on 31.08.2016, Majid Ali had stated that the deceased Babloo was going with him on a motorcycle to his residence in Shahpur Jat, Delhi. The accident happened on the way. Majid Ali further stated that he and the deceased were peripatetic salesmen, selling mats and bed sheets in Delhi. The affidavit of the claimant Babu – father of the deceased Babloo, is to the effect that the deceased was earning Rs.15,000/- per month and that he was working in Delhi. It reads *inter alia*, as under:-

“4. That the deceased Babloo was doing marketing in Dari and bed sheets and was earning a sum of Rs.15,000/- p.m.”

Furthermore in his cross-examination, the only doubt raised about, the evidence by way of affidavit is that the deceased Babloo was not earning Rs.15,000/- per month. Babu’s cross-examination reads as under:-

“.....The deceased was working in Delhi. He used to sell mats and bed sheets on his cycle. He was working for the last five

years. He was doing his own business. It is wrong to suggest that the deceased was not earning Rs.15,000/- p.m.”

3. What is evident from the above is that the claimant Babu had stated that his deceased son was selling mats and bed sheets on his cycle in Delhi. This aspect was not challenged. No questions were raised on this assertion. Therefore, the issue of the deceased working in Delhi went by unchallenged. However, the Insurance Company now doubts whether the deceased was earning Rs.15,000/- per month.

4. The learned counsel for the Insurance Company submits that there is no evidence on record to show that the deceased was working in Delhi for the last several years and/or selling mats and bed sheets on his cycle. The Court is conscious that persons engaged in the unorganized sector ordinarily do not have or keep records or proof of their employment or earnings. Therefore, strict rules of evidence would not be applicable to such parties, like the appellants, to prove by documentary evidence that the deceased was working and earning in Delhi.

5. Since no further questions were asked apropos the assertion of the father that his son was working in Delhi, nothing further was required to be inquired or looked into. Hence, the Court would accept that the deceased was indeed working in Delhi. Furthermore, his cousin Majid Ali, at whose instance the FIR was registered on 31.08.2016, too was in the same business of selling mats and bed sheets. Being near relatives and in the same business, it is quite plausible that the deceased was living with his cousin at Shahpur Jat, Delhi, i.e. the address of the complainant Majid Ali, which indicates that the deceased was indeed a resident of Delhi.

6. In view of the above, minimum wages applicable to an unskilled worker in Delhi as on the date of the accident i.e. Rs.9,568/- will be taken into consideration and the “loss of dependency” shall be re-calculated on that basis.
7. Let, fresh calculation of the amount payable to the claimants in terms of the above be furnished by the Insurance Company. The differential re-calculated amount, alongwith interest accrued thereon at the rate of 9% per annum from the date of filing of the claim petition, shall be deposited before the learned Tribunal within four weeks from the date of receipt of this order. The monies so deposited shall be released to the beneficiaries of the Award in terms of the scheme of disbursement specified therein.
8. The appeal stands disposed-off in the above terms.

NAJMI WAZIRI, J.

JULY 16, 2019

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