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

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Decided on: 12.02.2020

+ **MAC.APP. 966/2019**

HIMANI PALIWAL @ HIMANI THAKUR & ORS... Appellants
Through: Mr. Nandan K. Jha, Adv.

versus

RAKESH & ORS (M/S ORIENTAL INSURANCE CO. LTD)
..... Respondents
Through: Mr. Pankaj Seth, Adv. with
Mr. Gautam Narayan, ASC for GNCTD.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 55609/2019

1. Allowed, subject to all just exceptions.
2. The application stands disposed-off.

CM APPLs. 55610/2019, 55611/2019 (delay)

3. Issue notice.
4. Mr. Pankaj Seth, Advocate, accepts notice on behalf of the non-applicant.
5. For the reasons mentioned in the applications, the delay is condoned, subject to the applicant planting 30 trees at the 'Insaaf Bagh' area of the Central Ridge. The applicant shall appear before the DCF (South) on 25.02.2020 at 11.00 am, who shall indicate to him, the forest lands under his care, where the trees may be planted. The trees shall be of deciduous indigenous variety and they shall have a nursery age of three and a half

years and shall have a minimum height of at least six feet. The applicant may water and nurse trees for the next six months. Water will be supplied by the Forest Department, GNCTD. Depending upon the soil type and topography, the DCF may consider the following types of trees for plantation:-

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|-------------------------------|-------------------------------------|
| (i) Gular (Cluster Fig) | (ii) Kadamba (Burflower Tree) |
| (iii) Pilkhan (White Fig) | (iv) Jaamun (Black Plum) |
| (v) Bargad (Banyan Tree) | (vi) Mango |
| (vii) Amaltas (Golden Shower) | (viii) Mahua (Butter Tree) |
| [Indian Laburnum] | |
| (ix) Putranjiva | (x) Badh |
| (xi) Sagwan (Teak Wood) | (xii) Safed Siris (Albizia Procera) |
| (xiii) Kala Siris | (xiv) Anjeer |
| (xv) Kathal- Jackfruit | (xvi) Palash |
| (xvii) Arni | (xviii) Bistendu |
| (xix) Rohida | (xx) Medshingi |
| (xxi) Palash/Tesu/Dhak | (xxii) Hingot |
| (xxiii) Ronjh | (xxiv) Khejri |

6. Compliance Report alongwith photographs shall be filed both by the applicant and the DCF before the next date.
7. Mr. Gautam Narayan, the learned Additional Standing Counsel for the GNCTD has been called and apprised of this order. He assures the Court of due compliance.
8. In case of default in compliance of the aforesaid order, the case would be liable to be dismissed.
9. List for compliance on 17.03.2020.

MAC.APP. 966/2019

10. This appeal impugns the order dated 12.04.2018 passed by the learned MACT in MACT Case No. 56355/16 on the ground that the ITR for AY 2013-14 of the deceased just prior to his demise, which shows his gross

income as Rs. 2,94,991/-, was disregarded only on the ground that the same was not proven through the office of the Income Tax Officer.

11. The learned counsel for the petitioner relies upon the dicta of the Supreme Court in *Malarvizhi & Ors. v. United India Insurance Co. Ltd. And Anr.*, 2019 SCC OnLine SC 1579 which has held, *inter alia*:

“... the income tax return is a statutory document on which reliance is placed to determine annual income of the deceased....”.

12. Apropos the issue of relying upon ITRs for the calculation of loss of dependency, this Court in *Royal Sundaram General Insurance Co. Ltd. v. Kamlesh Devi & Ors.*, MAC APP. 17/2019, decided on 06.09.2019, has held as under:-

“6. What emanates from the above is that the ITR for Assessment Year 2015-16 was taken into consideration although the deceased passed away in the Assessment Year 2017-18. In effect, the considered ITR related to approximately 15 months prior to his demise. The deceased was within his statutory rights to file ITRs for Assessment Years 2016-17 and 2017-18, which were filed after the 2015-2016 ITR's, but because of his demise, his claimants had filed the said ITR's.

7. The ITRs for the subsequent years show a quantum jump of approximately 20% from the previous years which were filed by the claimants, whereas for the preceding year, the increase was merely under 10%. The ITRs of the deceased filed on record show his increase in earnings as under:

<i>Assessment Year</i>	<i>Absolute Income (in Rs.)</i>	<i>Year on Year Change (in Rs.)</i>	<i>Year on Year Change (%)</i>
<i>2013-14</i>	<i>3,06,000</i>	<i>11,000</i>	<i>3.5%</i>
<i>2014-15</i>	<i>3,17,000</i>	<i>57,000</i>	<i>18%</i>
<i>2015-16</i>	<i>3,74,000</i>	<i>44,000</i>	<i>12%</i>

2016-17	4,18,000	88,000	21%
2017-18	5,06,000		

8. The deceased was stated to be a priest in a religious place, therefore, his earning would largely be dependent upon the donations or contributions made to the religious institution. However, the learned counsel for the respondent submits that the deceased was a trader i.e. supplier of man power and his record would show that his earnings were primarily from supply of man power. However, this issue was never raised by the claimants, therefore, it was not dealt with by the learned Tribunal. ITRs filed shows his relevant income upto his demise as under:

Assessment Year	Gross Total Income (in rupees)
2014-15	3,17,833
2015-16	3,74,623
2016-17	4,18,630
2017-18	5,06,210

9. What emanates from the above is that the increase in his income between Assessment Years 2013-14 and 2014-15 was 3.5%. For the subsequent years, there were increase in income as 18%, 12% and 21%. There is an increase and a decrease in the amounts.

10. The returns were filed within the permissible statutory period, there is no reason to doubt the same. Accordingly, the income of the deceased as for the Assessment Year 2016-17 i.e. which shows an increase of 12% will be taken into consideration instead of for the year 2015-16, i.e. Rs. 3,74,267/- from Rs. 4,18,630/-. However, Mr. Gupta, the learned counsel for the insurance company states that this gross income includes income from other sources Chapter (iv) F i.e. Rs. 1,980/-. Therefore, the same would be required to be deducted. It was so ordered."

13. SLP (Civil) No(s). 30009-30010/2019, against the said judgment was dismissed by the Supreme Court on 06.01.2020.

14. In the circumstance, the case is remanded to the learned Tribunal only to enable the appellants-claimants to establish the veracity of the ITRs. If the ITRs are verified, the “loss of dependency” shall be calculated on the basis of the ITR earnings of the deceased.

15. Since the accident occurred about 8 years ago on 13.06.2013, it would be in the interest of justice that the *lis* should be settled as soon as possible. The Court would request the learned Tribunal to dispose-off the claim petition, preferably within a period of three months from the date when the case is next listed before it. The parties shall appear before the learned Tribunal on 02.03.2020. The learned counsel for the parties ensure the Court that they shall not take any adjournment and assist the learned Tribunal for expeditious disposal of the case.

16. The amount already deposited, would of course be set-off against any enhanced amount.

17. The appeal is disposed-off in the above terms.

18. A copy of this order be given *dasti* under the signature of the Court Master to the learned counsel for the parties.

NAJMI WAZIRI, J

FEBRUARY 12, 2020

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