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

Date of decision: 17.10.2023

(8)+ MAC.APP. 804/2016

IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr.A K Soni, Adv. (through VC)
versus

SAVITA DEVI & ORS

..... Respondents

Through: Mr.Yogendra Kumar Verma and
Mr.Manoj Goel, Advs. for R-1.

(9)+ MAC.APP. 445/2017

SAVITA DEVI

..... Appellant

Through: Mr.Yogendra Kumar Verma and
Mr.Manoj Goel, Advs.

versus

**SHIV KUMAR & ORS (IFFCO TOKIO GENERAL INSURANCE
CO LTD)**

..... Respondents

Through: Mr.A K Soni, Adv. for R-3 (through
VC)

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed challenging the Award dated 13.07.2016 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, East District, Karkardooma





Courts, Delhi (hereinafter referred to as 'Tribunal') in MAC No.216/2016 titled as *Smt.Savita Devi v. Sh.Shiv Kumar & Ors.*

Income of the Deceased:

2. As far as the Insurance Company, that is, the appellant in MAC.APP. 804/2016, is concerned, it challenges the Impugned Award by contending that as the deceased-Mr.Rajiv Kumar was working for gain with an employer at Ballabhgarh, Faridabad, Haryana, the minimum wages as notified by the Government of Haryana and not the minimum wages notified by the Government of the NCT of Delhi, should have been applied by the learned Tribunal for determining the income of the deceased. In this regard, the learned counsel for the Insurance Company has drawn my attention to the Claim Petition and the Evidence by Way of Affidavit filed by the claimant, wherein the address of the employer of the deceased is given as under:

“M/s. Yadav Tempo Service, Ballabhgarh, Faridabad, Haryana.”

3. On the other hand, the learned counsel for the claimant, that is, the appellant in MAC.APP. 445/2017, submits that the claimant, appearing as PW-1, had stated that the deceased was residing in Delhi. He submits that barring giving a suggestion to her that this statement was incorrect, no other proof to deny this fact had been placed on record by the insurance company.

4. He submits that, in fact, the learned Tribunal has erred in taking the minimum wages notified for an 'unskilled worker' into account for determining the income of the deceased. He submits that the deceased had studied till the 8th standard and therefore, the minimum wages notified for a





non-matriculate should have been taken into account by the learned Tribunal.

5. I have considered the submission made by the learned counsel for the parties.

6. As noted hereinabove, in the Claim Petition as also in the evidence by way of affidavit, the claimant had asserted that the deceased was working for gain for a firm in Ballabhgarh, Faridabad, Haryana. Apart from making a bald statement in the evidence by way of affidavit that the deceased was a resident of Delhi, no other proof in this regard was led by the claimant.

7. Taking the above into consideration, in my opinion, the learned Tribunal has erred in applying the minimum wages notified by the Government of National Capital Territory of Delhi for determining the income of the deceased. The same should have been determined on the minimum wages notified by the Government of Haryana.

8. At the same time, the learned Tribunal has taken the minimum wages of an unskilled workman into consideration. As the deceased had, admittedly, studied till 8th standard, the minimum wages notified for a non-matriculate by the Government of Haryana should have been taken into consideration. The same are stated to be Rs.5601.51/- per month. The loss of dependency shall, therefore, be recalculated taking the minimum wages of a non-matriculate notified by the Government of Haryana at the time of the accident, that is Rs.5601.51/- per month.

Loss of Love and Affection, Loss of Consortium, Loss of Estate and Funeral Expenses:

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Signing Date: 19.10.2023

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MAC.APP. 804/2016 & MAC.APP. 445/2017



9. The learned counsel for the insurance company further submits that the learned Tribunal has erred in awarding compensation of Rs.1,50,000/- under the head of loss of love and affection; and Rs.50,000/- each towards funeral expenses and loss of Estate. He submits that the above amounts cannot be sustained in view of the judgment of Hon'ble Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680.

10. I find merit in the submissions made by the learned counsel for the insurance company.

11. In terms of the judgment of *Pranay Sethi* (Supra), the claimant is not entitled to any compensation towards loss of love and affection but, at the same time, is entitled to compensation of Rs.15,000/- each towards loss of estate and funeral expenses. The claimant is also entitled to a compensation of Rs.40,000/- towards loss of consortium. The Impugned Award shall stand modified to this extent.

Deceased was not a Gratuitous Passenger:

12. The learned counsel for the insurance company further submits that, in fact, no compensation is payable to the claimant inasmuch as the deceased was travelling as a gratuitous passenger in the vehicle.

13. To a pointed query by this Court, if this plea was taken before the learned Tribunal or any evidence led thereon, the learned counsel for the insurance company fairly submits that this plea was not taken as a defence nor was any evidence led on this issue.

14. In view of the above, I find no merit in the said challenge of the learned counsel for the insurance company.





Future Prospects and Adoption of Multiplier:

15. This now brings to the challenge of the claimant to the Impugned Award.

16. The learned counsel for the claimant submits that the learned Tribunal has erred in not taking into account future prospects of income for determining the loss of dependency. The claimant also challenges the adoption of a multiplier of 13 by the learned Tribunal.

17. The learned counsel for the claimant submits that it had been established on record that the deceased was aged about 28 years as on the date of the accident.

18. I find merit in the challenge.

19. In view of the above, applying the ratio in *Pranay Sethi* (Supra), the future prospects of 40% should have been taken into consideration by the learned Tribunal for determining the loss of dependency.

20. Similarly, in view of the judgment in *Sarla Verma (SMT) & Ors. v. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121, the proper multiplier to be adopted would be 17.

21. The Impugned Award shall stand modified to this extent.

Conclusion:

22. In view of the above, the compensation to be awarded in favour of the claimant is re-computed as under:

Particulars	Amount
Loss of dependency	Rs.7,99,895.6 rounded off to Rs.8,00,000/-





Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Loss of consortium	Rs.40,000/-
<u>Total</u>	<u>Rs.8,70,000/-</u>

23. The above amount shall carry interest at the rate and for the period as prescribed in the Impugned Award by the learned Tribunal.

24. By the order dated 04.10.2016 passed in MAC.APP.804/2016, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the UCO Bank, Delhi High Court Branch.

25. As the amount of compensation now stands reduced, the excess amount deposited by the insurance company shall be released by the UCO Bank in favour of the insurance company alongwith interest accrued thereon. The remaining amount shall be released by the UCO Bank in favour of the claimant as a lump sum alongwith interest accrued thereon.

26. The statutory amount deposited by the insurance company shall be released in favour of the insurance company along with interest accrued thereon.

27. The appeals are disposed of in the above terms. There shall be no orders as to costs.

NAVIN CHAWLA, J

OCTOBER 17, 2023/ns/AS

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 19.10.2023

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MAC.APP. 804/2016 & MAC.APP. 445/2017