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

% Judgment delivered on: 04th February, 2022

+ MAC.APP. 31/2022 & CM APPL. 6288/2022

NEW INDIA ASSURANCE CO LTD Appellant

versus

SWETA DEVI & ORS. Respondents

Advocates who appeared in this case:

For the Appellant : Mr. D.K. Sharma, Advocate

For the Respondents : None.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CM APPL. 6289/2022 (Exemption)

Allowed, subject to all just exceptions.

CM APPL. 6290/2022 (condonation of delay)

The Supreme Court by its orders 23.03.2020, 27.04.2021 and 10.01.2022 in Suo Motu Writ Petition (Civil) No.3 of 2020 has suspended the period of limitation in view of the ongoing pandemic. Accordingly, there is no delay in filing the appeal.

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The application is disposed of.

MAC.APP. 31/2022

1. The hearing was conducted through video conferencing.
2. Appellant impugns order dated 21.10.2021 in respect of the deceased Mr. Vashisht Kumar (MACP No. 331/2018 titled *Smt. Sweta Devi & Ors. Vs. Parveen Kumar Yadav & Ors.*).
3. The only ground urged by learned counsel appearing for the appellant is that the tribunal has incorrectly assessed the income of the deceased at Rs. 16,468/- per month.
4. Learned counsel submits that no evidence was produced with regard to the income of the deceased. He submits that the testimony of the claimant, wife of the deceased was that he was employed as a driver and he was earning Rs. 20,000/- per month but neither any document or occupation nor income of her husband was produced.
5. Learned counsel submits that in the Detailed Accident Report (DAR), qua the deceased it was reported that his occupation was driver and his monthly income was Rs. 10,000/- per month. He submits that since the DAR had stated that the income of the deceased was Rs. 10,000/- per month, the tribunal has erred in taking an amount higher than the amount reported by DAR.



6. I am unable to accept the contention of learned counsel for the appellant for the reasons DAR in so far as the income of the deceased is concerned cannot be taken as conclusive proof. There is no reference in the DAR as to on what basis income of the deceased has been reported to be Rs. 10,000/- per month.

7. In the impugned award, tribunal has noticed that the claim of the wife of the deceased was that he was working as a driver and earning Rs. 20,000/-.

8. Tribunal has noticed that there was no dispute that the deceased was a driver and employed as such. Tribunal has held that as no evidence of occupation or income was produced, it had no option but to take the income of the deceased at minimum wage for a skilled person prevailing in Delhi because the accident had taken place in Delhi. For the purpose of assessing his income the Tribunal has thereafter taken the minimum wage of a skilled person which was Rs. 16,468/- per month.

9. It may further be noticed that there is no dispute raised by the appellant with regard to the occupation of the deceased i.e. that of a driver. A person who is working as a driver has to be taken as a skilled person as he possesses the skill of driving.

10. In the absence of any evidence being produced to the contrary,



tribunal had correctly taken the minimum wage of a skilled person prevailing in Delhi as on the date of the accident.

11. In view of the above, I find no infirmity in the impugned award in so far as it relates to the subject claim petition. The appeal is accordingly dismissed.

12. It is clarified that this Court has neither considered nor commented upon merits of the other claim petitions which have also been disposed of by the same impugned award.

13. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

FEBRUARY 4, 2022
‘rs’

SANJEEV SACHDEVA, J