



\$~30

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

% Judgment delivered on: 25th March, 2022

+ MAC.APP. 88/2022

NEETU & ORS.

..... Appellants

versus

ORIENTAL INS CO LTD & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellants: Mr. Anshuman Bal, Advocate

For the Respondents: Mr. A.K. Soni, Advocate for Ins. Co.
(through VC)

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CM APPL. 14791/2022 (Exemption)

Allowed, subject to all just exceptions.

CM APPL. 14792/2022 (condonation of delay)

The Supreme Court by its orders dated 23.03.2020, 27.04.2021 and 10.01.2022 in *Suo Moto Writ Petition (Civil) No. 3 of 2020* had suspended the period of limitation in view of the ongoing pandemic.

MAC.APP. 88/2022

Page 1 of 3



Accordingly, there is no delay in filing the appeal.

The application is disposed of.

MAC.APP. 88/2022

1. Issue notice. Notice is accepted by learned counsel appearing for respondent no. 1.
2. Since there is no dispute with regard to the liability of the insurance company, vis-à-vis, driver and owner, service of respondent no. 2 is dispensed with.
3. With the consent of the parties, the appeal is taken up for consideration today.
4. Learned counsel appearing for the appellant submits that the tribunal has erred in taking the minimum wage of an unskilled worker for computing the compensation whereas admittedly the deceased was a non-matriculate.
5. It is noticed from the impugned award that the tribunal has erred in not noticing the copies of the marksheet and school leaving certificate of the deceased exhibited as Exb. PW1/6 and Exb. PW1/7 for assessing the income of the deceased. However, the very same documents have been taken into account by the tribunal for



ascertaining the age of the deceased.

6. Clearly there is an ex-facie error on the face of the record. Accordingly, the impugned award to the said limited extent is not sustainable.

7. The award is accordingly modified taking the minimum wage of the deceased as that of a non-matriculate instead of an unskilled worker.

8. In view of the above, appeal is allowed. The matter is remitted to the tribunal for the purposes of computing the compensation by taking the income of the deceased on the basis of minimum age of a non-matriculate as on the date of the accident instead of the minimum wage of an unskilled worker.

9. The appeal is allowed in the above terms.

10. Parties shall appear before the tribunal for directions on 25.04.2022.

SANJEEV SACHDEVA, J

MARCH 25, 2022
'rs'