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

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Judgment delivered on: 09.02.2022

+ MAC.APP. 37/2022

ASHOK KUMAR

..... Appellant

versus

UNION OF INDIA AND ORS. & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Anshuman Bal, Advocate.

For the Respondent: Mr. Aditya Singh Deshwal, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 7127/2022

1. The hearing was conducted through video conferencing.
2. The appeal impugns award dated 31.07.2019. The appeal was originally filed on 07.01.2020 with a delay of 64 days.
3. It is contended that the appellant who is a senior citizen fell ill and accordingly could not file the appeal within time and he after his recovery approached the counsel who thereafter drafted the appeal and filed the same.
4. It is submitted that on account of the lockdown the appeal could



not be taken back and refiled in physical form and it was thereafter mentioned and filed in digital form.

5. Issue notice. Notice is accepted by learned counsel appearing for the respondents.

6. For the reasons stated in the application, I am satisfied that appellant has sufficiently explained the delay in filing the appeal.

7. The delay is accordingly condoned.

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8. Appellant impugns award dated 31.07.2019 to the limited extent that the Tribunal has taken the salary of the deceased, wife of the appellant at minimum wage.

9. Learned counsel for the appellant submits that the wife of the appellant was a permanent employee in Municipal Corporation of Delhi and was earning about Rs.25,000/- per month. He submits that even though the evidence had been produced before the Tribunal that she was a permanent employee, Tribunal has erred in rejecting the same and taking only the minimum wage of an unskilled worker during the said period for the purposes of calculating loss of dependency.

10. Learned counsel submits that at the time when evidence was led the pay scale had not been finalized as the same was under consideration with regard to implementation of 7th Pay Commission.



He submits that subsequently a certificate has been issued by the Municipal Corporation on 28.10.2021 certifying what her last paid salary was.

11. Issue notice. Notice is accepted by learned counsel appearing for the respondents.

12. Since there is no dispute with regard to the liability of respondent No.1 *vis-à-vis* respondent Nos.2 & 3 as they were the employees of respondent No.1, service of respondent Nos.2 & 3 is dispensed with

13. With the consent of parties the appeal is taken up for final disposal today.

14. In the impugned award, with regard to the salary of the deceased, Tribunal has held that though the claim of the appellant was that his wife was working in MCD and earning Rs.25,000/- but the income of the deceased had not been proved in accordance with law and in absence thereof minimum wage prescribed during the relevant period has been taken.

15. The Tribunal has clearly erred in not noticing the evidence led by the appellant by producing Sh. Dal Chandra, LDC who had produced the service record of the deceased. The service record clearly shows that the deceased was a regular employee w.e.f. 01.04.2004 and in the pay scale of Rs.2550-3200/- (pre revised).

16. Appellant has along with the appeal paper book filed a



certificate issued by the Administrative Officer, DEMS NGZ certifying that she was last paid emoluments of Rs.22,153/-.

17. In view of the above, the impugned award to the limited extent of computation of the emoluments cannot be sustained and is accordingly set aside. The matter is remitted to the Tribunal for re-assessing the amount towards loss of dependency.

18. Appellant is given an opportunity to lead additional evidence and produce material with regard to the salary actually drawn by the deceased during her employment.

19. For the said purpose the petition shall be listed before the Tribunal on 03.03.2022.

20. Tribunal shall endeavour to expeditiously conclude the proceedings and pass a fresh award.

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

SANJEEV SACHDEVA, J.

FEBRUARY 09, 2022

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