



2023:DHC:7440



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

Date of decision: 10.10.2023

+ **MAC.APP. 63/2022**

HEENA & ORS.

..... Appellants

Through: Mr.Anshuman Bal, Adv.

versus

RELIANCE GENERAL INSURANCE CO LTD & ORS.

..... Respondents

Through: Mr.A.K. Soni, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 18.09.2020 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-02, (North-District), Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC Petition No. 4665/2016 titled ***Smt. Heena & Ors. v. Sh. Tarsem Lal & Ors..***

2. The limited challenge of the appellant to the Impugned Award is on the determination of the income of the deceased-Sh.Tosheen, who had unfortunately died, having suffered fatal injuries, in an accident on 05.12.2014 when he was travelling along with his wife on a motorcycle and was hit by a TATA Tempo bearing no. HR-64-0656 (hereinafter referred to as the 'Offending Vehicle') being driven in a rash and negligent

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manner.

3. The learned counsel for the appellants submits that though the appellants could not produce any cogent evidence of the income of the deceased, his Driving Licence (Ex-PW1/2), produced before the learned Tribunal, authorized the deceased to drive a bus. Placing reliance on the judgment of this Court in *Mahrunisha & Ors. v. Mohd Naseem Haider & Ors*, 2012:DHC:1418, he submits that this Court has taken cognizance of the fact that the salary of a truck driver, a bus driver, and a motor car driver, cannot be the same, although all of them are skilled workers. He submits that the learned Tribunal should, therefore, have independently assessed the income of the deceased and, in any case, not applied the minimum wages notified for an unskilled worker for determining his income.

4. On the other hand, the learned counsel for the respondent no.1 submits that the appellants did not even name the employer with whom the deceased was allegedly working at the time of the accident, leave alone call the employer as a witness. There was no proof of the income of the deceased. Even the appellant no.1, in her evidence by way of affidavit, did not even state as to what vehicle the deceased used to drive. He submits that in the absence of any proof of income/employment of the deceased, the learned Tribunal has rightly determined the income of the deceased on the basis of minimum wages notified for an unskilled worker. He submits that merely because his



licence was endorsed for driving a bus, will not make the deceased a skilled worker.

5. I have considered the submissions made by the learned counsels for the parties.

6. In absence of any proof of the deceased being employed as a driver of a bus and having any income therefrom, the learned Tribunal has, in my view, rightly assessed the income of the deceased on the basis of the minimum wages notified by the Government of NCT of Delhi. However, at the same time, the learned Tribunal has erred in applying the minimum wages for an 'unskilled worker'. As the licence of the deceased (Ex-PW1/2) shows that the deceased was holding a licence to drive *inter alia* a bus, in my view, the minimum wages for a skilled worker should have been taken into account for determining the income of the deceased.

7. The judgment of this Court in ***Mahrnunisha & Ors.*** (Supra) cannot be applied to the facts of the present case inasmuch as this Court has no basis for determining what would be the fair wage that would be earned by a driver of a bus, especially when there is no proof also before this Court that the deceased was, in fact, so employed and was driving a bus for earning his livelihood.

8. In view of the above, the Impugned Award is modified to the limited extent that the income of the deceased shall be determined on the basis of the minimum wages notified by the Government of NCT of Delhi for a skilled worker.



9. The learned counsel for the appellant submits that at the relevant time, the minimum wages notified for a skilled worker was Rs.10,478/- per month.

10. Accordingly, the compensation awarded to the appellants towards loss of dependency is re-determined as under:-

<u>S.No.</u>	<u>Particulars</u>	<u>Trial Court</u>	<u>High Court</u>
1.	Loss of dependency	$\text{Rs.}8632 \times 3/4 \times 140/100 \times 12 \times 17$ = Rs.18,49,000/-	$\text{Rs.}10,478 \times 3/4 \times 140/100 \times 12 \times 17$ =Rs.22,44,387.60/- Rounded off to Rs. 22,44,500/-
2.	Loss of love and Affection	NIL	NIL
3.	Loss of Consortium	Rs.2,40,000/-	Rs.2,40,000/-
4.	Loss of Estate and Funeral Expenses	Rs.30,000/-	Rs.30,000/-
Total		=Rs.21,19,000/-	=Rs.25,14,500/-
<u>Enhanced Amount</u>			(Rs.25,14,500 – Rs.21,19,000) = Rs.3,95,500/-

11. The respondent no.1 shall deposit the enhanced compensation along with interest at the rate as was awarded by the learned Tribunal, with the learned Tribunal within a period of eight weeks from today. The compensation shall be released in favour of the appellants in terms of the Schedule prescribed



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by the Impugned Award.

12. The appeal is allowed in the above terms. There shall be no orders as to costs.

NAVIN CHAWLA, J

OCTOBER 10, 2023/rv/SS

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