2023:DHC:6632

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

Date of decision: 11.09.2023

(9)+ MAC.APP. 62/2018

ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr.R.K. Tripathi, Adv.

versus

MOHD YUSUF & ORS ..... Respondents
Through: Mr.S.N.Parashar, Adv.

(10)+ MAC.APP. 3/2022

MOHD YUSUF AND ORS ..... Appellants
Through: Mr.S.N.Parashar, Adv.

versus

ORIENTAL INSURANCE CO LTD AND ORS ..... Respondents
Through: Mr.R.K. Tripathi, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (*ORAL*)

CM APPL. 37993/2019 in MAC.APP. 62/2018

1. For the reasons stated in application, the delay in filing the cross-appeal stands condoned.

2. The application is allowed.

MAC.APP. 62/2018 & CM APPL. 1868/2018
MAC.APP. 3/2022

3. The MAC.APPL.62/2018 has been filed by the Insurance

Company challenging the Award dated 17.11.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (Pilot Court), Karkardooma Courts (hereinafter referred to as the 'Tribunal') in MACT case No.14308 of 2015 titled ***Mohd. Yusuf & Ors v. Arun Kumar & Anr.***.

4. The MAC.APPL.3/2022 are the cross-objections filed by the claimants, seeking enhancement of the compensation granted in their favour by the learned Tribunal.

5. The limited challenge of the Insurance Company to the Impugned Award is that the learned Tribunal has erred in taking into account the minimum wages notified by the Government of NCT of Delhi for assessing the income of the deceased Sh.Abdul Hasan.

6. The learned counsel for the appellant/Insurance Company submits that it was the own case of the claimants that the deceased was driving a TSR registered in the State of Uttar Pradesh and bearing registration no.UP-14-BT-8999 in front of Grimanjli Public School, Thana Sahibabad, Ghaziabad, Uttar Pradesh, when it was hit by the car from behind, resulting in his death. The deceased was also a resident of Uttar Pradesh (in short, 'UP'). The learned counsel for the appellant/Insurance Company submits that therefore, when the deceased was a resident of UP, and was working for gain in the State of UP, the learned Tribunal should have adopted the minimum wages notified by the State of UP instead of one notified by the Government of NCT of Delhi in assessing his income.

7. On the other hand, the learned counsel for the respondents/claimants submits that the learned Tribunal has erred in taking the minimum wages notified for an 'Unskilled Labour' while

determining the income of the deceased. He submits that as the deceased was working as a driver of the TSR, the minimum wages notified for a 'Skilled Worker' should be taken into account.

8. The learned counsel for the claimants further submits that the learned Tribunal has also erred in not granting compensation towards future prospects.

9. The claimants also challenge the Impugned Award on account of non-grant of non-pecuniary damages in terms of the judgment of the Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680, as clarified in the subsequent judgment of the Supreme Court in ***United India Insurance Company Ltd. v. Satinder Kaur alias Satwinder Kaur & Ors.*** (2021) 11 SCC 780.

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

<u>MINIMUM WAGES:</u>

11. As it is not denied that the deceased was a resident of State of UP, and was working for gain within that State at the time of accident, the learned Tribunal has erred in adopting the minimum wages notified by the Government of NCT of Delhi for determining the income of the deceased. The Impugned Award, to this extent, is liable to be modified. It is directed that the income of the deceased shall be determined on the basis of the minimum wages notified by the State of UP as on the date of the accident.

12. At the same time, it had been proved on record by the claimants that the deceased was working as a driver of the TSR on the date of the accident. Being a qualified driver, the minimum wages for a 'Skilled Worker' should have been adopted by the learned Tribunal.

13. Accordingly, it is directed that the income of the deceased shall be determined on the basis of the minimum wages notified by the Government of UP for a 'skilled worker' as on the date of the accident.

FUTURE PROSPECTS:

14. In ***Pranay Sethi*** (supra), the Supreme Court has also directed addition of the future prospects to the income, by observing as under:

> *"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
>
> *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

15. In the present case, as the deceased was working as a driver, that is, was self-employed, and was aged about 49 years, the future prospects at the rate of 25% should have been added to his income. It is ordered accordingly.

NON-PECUNIARY HEADS:

16. The learned Tribunal on the non-pecuniary heads has awarded a sum of Rs.40,000/- towards loss of consortium. In ***Satinder Kaur*** (supra), the Supreme Court has clarified that the 'loss of consortium' includes the loss of Parental Consortium, Filial Consortium as well as Spousal Consortium.

17. In the present case, the claimants are the children, mother, and the wife of the deceased. They all would be entitled to the loss of consortium in their own right.

18. Accordingly, the Impugned Award shall stand modified to that extent, that is, the loss of consortium of Rs.40,000/- for each of the claimants is awarded.

19. In view of the above, the compensation amount payable to the claimants is re-determined as under:-

S.No.	**Heads**	**Amount**
1.	Minimum Wages of Skilled person in U.P. as on 01.04.2014 Rs.301.52 per day x 26 days	Rs.7,839.52
2.	Loss of dependency (Rs.7,839.52 + 25% of Rs. 7,839.52) x12 months x 13	Rs.11,46,530/-
3.	Loss of Consortium (Rs. 40,000 x 11 Claimants)	Rs.4,40,000/-
4.	Loss of Estate	Rs.15,000/-
5.	Funeral Expenses	Rs.15,000/-
	Total	**Rs.16,16,530/-**
6.	Compensation as per Impugned Award	(Rs.10,71,000/-)
	Enhanced Amount	**Rs.5,45,530/-**

20. The Claimants are also entitled to interest at the rate of 9% p.a. on the above calculated amount.

21. In terms of the order dated 17.01.2018 passed in MAC. APP. 62/2018, the Insurance Company was directed to deposit the compensation amount awarded by the learned Tribunal, along with interest, with the learned Tribunal. The Insurance Company shall now deposit the enhanced compensation amount with the learned Tribunal, within a period of six weeks from today.

22. The compensation amount shall be released in favour of the claimants in terms of the schedule of disbursal as stipulated in the Impugned Award.

23. The statutory amount deposited by the Insurance Company in its appeal shall be released to the Insurance Company, along with interest accrued thereon.

24. The appeals are disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 11, 2023/Arya/ss