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

Date of decision: 20.09.2023

+ **MAC.APP. 85/2021**

ASHA & ORS.

..... Appellants

Through: Mr. S.N. Parasher, Adv.

versus

KUNDAN SINGH & ORS.

..... Respondents

Through: Mr. Abhishek Gola and Mr.
Anshul Kumar, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellants/claimants, challenging the Award dated 25.01.2020 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (South-East District), Saket Courts, New Delhi (hereinafter referred to as 'Tribunal') in MACT No.738/18, titled as *Asha & Ors. vs. Kundan Singh & Ors.*

INCOME OF THE DECEASED:

2. The challenge of the appellants to the Impugned Award is against the learned Tribunal assessing the income of the deceased- Mr. Ravinder Kumar at Rs.16,330/- based on the salary slip of the petitioner for the month of March, 2018 (Ex.PW3/1).

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MAC.APP. 85/2021

Page 1 of 6



3. The learned counsel for the appellants submits that in the month of March, 2018, the deceased had worked only for 20 days because of which his Basic Pay was reflected as Rs.11,538/-. He submits that the same should not have been taken into account as it was not for the full month. On the other hand, the salary certificate for the month of February, 2018, which was for the full month and reflected the Basic Pay of the deceased as Rs.15,000/-; HRA of Rs.6229/-; Conveyance of Rs.1292/- ;and Washing Allowance of Rs.554/-, totaling Rs.23,075/-, should have been considered by the learned Tribunal.
4. The learned counsel for the respondent no.3, on the other hand submits that as the accident had taken place on 02.04.2018, the learned Tribunal has rightly relied upon the salary slip for the month of March, 2018 for determining of the income of the deceased. He submits that it is not evident from the Salary slip if the deceased was a daily wage earner or was employed on a fixed salary.
5. I have considered the submissions made by the learned counsels for the parties.
6. The salary slip for month of March, 2018 clearly indicates that it is only for the period of 20 days. On the other hand, the salary slip for the month of February, 2016 indicates that it is for 26 days. In my view, as the salary slip for the month of February, 2018 is also approximate to the date of accident and is for the full month, the same should have been taken into account by the learned Tribunal for assessing the income of the deceased. The salary slip for February, 2018 indicates that the deceased was being paid a Basic



Pay of Rs.15,000/-; HRA of Rs.6229/-; Conveyance of Rs.1292/-; and washing allowance of Rs.554/-, totaling Rs.23,075/-. In ***Sunil Sharma & Ors. v. Bachitar Singh & Ors.***, (2011) 11 SCC 425, the Supreme Court has held that allowances which are for the benefit of the entire family must be added to arrive at the ‘income’ of the deceased. It was held as under:-

“6. In National Insurance Co. Ltd. v. Indira Srivastava [(2008) 2 SCC] S.B. Sinha, J. has observed that: (SCC p. 767, para 9)

“9. The term ‘income’ has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.”

7. His Lordship also stated that if some facilities were being provided whereby the entire family stood to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis of which the amount of compensation payable for the death of the kith and kin of the applicants was required to be determined. This Court held that: (Indira Srivastava case [(2008) 2 SCC 763] , SCC p. 768, para 12)

“12. ...superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family.”



8. This Court clarified that by opining that: (Indira Srivastava case [(2008) 2 SCC 763] , SCC p. 771, para 17)

“ ‘just compensation’ must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-packet is what the dependants have lost [in view of] death of the deceased. It is in the nature of compensation for future loss towards the family income.”

and that: (Indira Srivastava case [(2008) 2 SCC 763] , SCC p. 772, para 19)

“19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

9. In *Raghuvir Singh Matolya v. Hari Singh Malviya* [(2009) 15 SCC 363] this Court has observed that dearness allowance and house rent allowance should be included for computation of income of the deceased.

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11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased.”

(emphasis supplied)





7. Accordingly, the income of the deceased is assessed as Rs. 23,075/-.

LOSS OF CONSORTIUM

8. The next challenge to the Impugned Award is on the account of the learned Tribunal awarding only Rs.40,000/- as loss of consortium to the claimants. The learned counsel for the appellants submits that as the appellants are the wife, children, and the father of the deceased (who unfortunately expired on 23.01.2020), all the claimants would be entitled to loss of consortium at the rate of Rs.40,000/- each.
9. I find merit in the submission made.
10. In *United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and Ors.*, (2021) 11 SCC 780, it is has been held that loss of consortium would include loss of 'spousal', 'parental', and 'filial' consortium and each of the claimants would be entitled to compensation of Rs. 40,000/- on this head.
11. Recently, the Supreme Court in *Anjali & Ors. v. Lokendra Rathod & Ors.*, AIR 2023 SC 44, and in *Rahul Ganpatrao Sable v. Laxman Maruti Jadhav (Dead) Through Lrs. & Ors.*, 2023 SCC OnLine SC 780, has held that the rate of Rs.40,000/- stipulated in *Pranay Sethi* (supra), in terms of the later judgment of the Supreme Court in *Satinder Kaur alias Satwinder Kaur & Ors.* (supra) is to be awarded for each of the claimants.
12. Accordingly, all the claimants are held entitled to loss of consortium of Rs.40,000/- each, equalling Rs.2,00,000/-.
13. In view of the above, the compensation payable to the Claimants is re-determined as under:



S.No.	Particulars	Trial Court	High Court
1.	Loss of dependency	16,330x3/4x140/100 x12x15 = Rs.30,86,370/-	23,075x3/4x140/100 x12x15 = Rs.43,61,175/-
2.	Loss of Consortium	Rs.40,000/-	40,000x5 = Rs.2,00,000/-
3.	Loss of Estate	Rs.15,000	Rs.15,000
4.	Funeral Expenses	Rs.15,000	Rs.15,000
Total		Rs.31,56,370/-	Rs.45,91,175/-
<u>Enhanced Compensation</u>			<u>Rs.14,34,805/-</u>

14. The enhanced compensation shall also carry interest at the rate of 9% per annum and for the period as awarded by the learned Tribunal in its Impugned Award.
15. The respondent no.3 shall deposit the enhanced compensation along with interest with the learned Tribunal within a period of six weeks from today. The same shall be released in favour of the claimants in accordance with the schedule of disbursement prescribed by the Impugned Award.
16. The appeal is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 20, 2023/ns/ss