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

Date of decision: 21.09.2023

+ MAC.APP. 258/2019
USHA & ORS

..... Appellants

Through: Ms.Aruna Mehta, Adv.

versus

BISHAN SINGH & ORS (TATA AIG GENERAL
INSURANCE CO)

..... Respondents

Through: Ms.Shalu Sisodia, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 29.10.2018 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-02 (West-District), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in Claim Petition no. 76800/2016, titled ***Smt. Usha & Ors. v. Bishan Singh & Ors.***

2. It was the case of the claimants that on 08.12.2016, the deceased- Sh.Ved Prakash along with Mr.Amit Aggarwal, Ms.Isha Aggarwal, wife of Mr.Amit Aggarwal, and Ms. Dharvi, daughter of Mr.Amit Aggarwal and Ms.Isha Aggarwal, were returning to Delhi from Jammu in a car bearing registration No.DL-8CW-8512 being driven by the deceased-Sh.Ved Prakash. Mr.Dhanraj Aggarwal, uncle of Mr.Amit Aggarwal, was following them in another car bearing

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registration No.DL-10CD-7937. At about 11.50 p.m. the car driven by the deceased hit a truck bearing registration No.HR-37C-9870 (hereinafter referred to as the 'Offending Vehicle') which was parked in the middle of the road at Main GT Highway, Alluna, and could not be seen by deceased. Consequently, the deceased succumbed to his injuries on 11.12.2013.

3. The limited grievance of the appellants against the Impugned Award is on two accounts:

- a. That the learned Tribunal has erred in assessing the income of the deceased as Minimum Wages for an 'unskilled worker'; and
- b. That the learned Tribunal has failed to award the loss of consortium in favour of all the claimants

INCOME

4. The learned counsel for the appellants submits that the deceased was working as a driver. Even if the statement of Mr.Bijender (PW-2), who was the owner of the vehicle in which the deceased was travelling at the time of the accident, is to be disbelieved on the salary he was paying to the deceased, at least minimum wages for a 'skilled worker' should have been taken into account.

5. On the other hand, the learned counsel for the respondent no.3 submits that the statement of PW-2, who claims to be the employer of the deceased, has rightly been discarded by the learned Tribunal. She submits that there were various inconsistencies in his statement which showed that he could not have employed the deceased as a driver.

6. I have considered the submissions made by the learned counsels



for the parties.

7. The FIR in relation to the accident was registered on the statement of Mr.Dhanraj Aggarwal, uncle of Mr.Amit Aggarwal, on the very next date of the accident. He stated that the deceased was the one who was driving the car which had met with the accident. It was proved that the car is owned by PW-2

8. PW-2 in his Evidence by way of Affidavit had stated that he had employed the deceased as a driver at a salary of Rs.10,000/- per month to pick-up and drop his children to their school, and also to take him to his native village in Haryana to see his ailing father and to look after the agricultural land.

9. The wife of the deceased, that is appellant no.1, had appeared as PW-1 in support of the claim petition, and had proved that the deceased was holding a valid driving licence as on the date of the accident. She had also deposed that the deceased was working with Mr.Bijender at the time of the accident and drawing a salary of Rs.10,000/- per month.

10. The learned Tribunal has disbelieved that the deceased was working as a driver with Mr.Bijender and drawing a salary of Rs.10,000/- per month, by observing as under:

“25. In his cross-examination by respondent No.3/Insurance Company, PW2/Bijender testified that he was working as a Fire Operator in Delhi Fire Service and earning Rs.36,000/- only per month. He also testified that his wife was a housewife and doing petty job of stitching and earning about Rs.2,000-2,500/- per month. In his further cross-examination, he stated that his children were studying in St.Angel Public School situated in Rohini and that conveyance was provided to



his children from the school, however, he did not avail the same. He also testified that he had employed deceased Ved Prakash on the recommendation of one Vipin, whose address or particulars were not known to him. He admitted that he neither knew residential address of deceased Ved Prakash nor had obtained residential proof of deceased Ved Prakash. Qua the voucher (EX.PW2/1) of Rs.10,000/- allegedly paid to deceased VedPrakash as salary, it was admitted by PW2/Bijender that he did not have any documentary proof that signatures appearing on Ex.PW2/1 was that of deceased Ved Prakash. The testimony of PW2/Bijender that deceased Ved Prakash was employed as a driver with him does not inspire confidence or appears to be truthful.

Admittedly, PW2/Bijender was only a Fire Operator and earning Rs.36,000/- per month. Also he was a resident of Sector-15, Rohini i.e. the Sector in which the school of his children was situated. Hence, it is rather unbelievable that PW2/Bijender would pay a salary of Rs.10,000/- per month to deceased Ved Prakash when he himself was earning Rs.36,000/- per month. Further, there was no requirement of his engaging deceased Ved Prakash as driver to ferry his children to and fro from the school when the school was situated in the vicinity of his residence. It is also pertinent to mention here that PW2/Bijender did not examine Praveen Kumar in support of his version that his car was borrowed by Praveen Kumar along with his driver i.e. deceased Ved Prakash. Considering the said facts and circumstances, I am of the opinion that the petitioners failed to prove the vocation of deceased Ved Prakash as a driver. Petitioners also did not place on record any document qua the educational qualification of the deceased.

Accordingly, he is considered as Unskilled Worker and his income is assessed as Rs.8,086/- per month as per Minimum Wage Rate prevailing in Delhi at the time of



accident.”

11. In my view, the learned Tribunal has erred in disbelieving the statement of Mr.Bijender. Mr.Bijender appears to be a credible witness inasmuch as it is proved on record that the deceased was, indeed, driving his vehicle at the time of the accident. It is also not shown as to why he would depose falsely for the claimants. In a claim petition arising out of a motor vehicular accident, the claimants are not to prove their case beyond all reasonable doubts, but only on the touchstone of preponderance of probability. The income can also be assessed on the basis of the guess work. The learned counsel for the appellants has submitted that the minimum wages for a ‘skilled worker’ at the time of the accident was Rs.9,800/- per month. Therefore, the salary of Rs.10,000/- per month cannot be stated to be unreasonable or exorbitant so as to disbelieve it.

12. In ***Chandra v. Mukesh Kumar Yadav***, (2022) 1 SCC 198, the Supreme Court has held as under:

“9. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such license and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of



documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month."

13. In my view, therefore, the learned Tribunal has erred in assessing the income of the deceased on the basis of the minimum wages for a 'unskilled worker'. The same should have been assessed on the income proved, that is, Rs.10,000/- per month.

14. The compensation payable to the claimants shall therefore be re-computed taking the income of the deceased as Rs.10,000/- per month.

LOSS OF CONSORTIUM

15. As far as the challenge of the appellant on the issue of loss of consortium is concerned, as explained by the Supreme Court in ***United India Insurance Company Ltd. v. Satinder Kaur alias Satwinder Kaur***, (2021) 11 SCC 780, the loss of consortium shall include the Loss of 'parental consortium', 'filial consortium' and 'spousal consortium', therefore each of the claimants would be entitled to loss of consortium in their own rights. The learned counsel for the respondent no.3, placing reliance on the judgment dated 27.03.2023 passed by the Supreme Court in Civil Appeal Nos. 2410-2412 of 2023, titled ***Shri Ram General Insurance Co. Ltd. v. Bhagat***

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Singh Rawat & Ors., submits that the loss of consortium has to be only Rs.40,000/- collectively.

16. I am unable to agree with the said submission.

17. In ***Bhagat Singh Rawat*** (supra), the Supreme Court has held as under:

*“We are, however, of the view that the total amount has to be assigned under a particular heading and **that will go depending on the number of legal heirs present.**”*

(Emphasis supplied)

18. In ***Anjali v. Lokendra Rathod***, 2022 SCC OnLine SC 1683, and in ***Rahul Ganpatrao Sable v. Laxman Maruti Jadhav***, 2023 SCC OnLine SC 780 also, the Supreme Court has awarded compensation towards loss of consortium to each of the claimants therein.

19. The claimants herein being the wife and the children of the deceased, therefore, are entitled to compensation towards the loss of consortium of Rs.2 lakhs; the enhanced amount being Rs.1,60,000/-.

20. In view of the above, the compensation awarded in favour of the claimants is re-assessed as under:

S.No.	Particulars	Trial Court	High Court
1.	Loss of Dependency	8086x140/100x3/4 x12x16 = 16,30,137.60 (Rounded off to Rs.16,30,200/-)	10,000x140/100x3/4 X12x16 =Rs.20,16,000/-
2.	Loss of	Rs.40,000/-	Rs.40,000x5

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	Consortium		=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.17,00,200/- (Rounded off to Rs.17,01,000/-)	=Rs.22,46,000/-
<u>Enhanced Compensation</u>			<u>Rs.5,45,000/-</u>

21. The enhanced compensation shall be deposited by the respondent no.3 with the learned Tribunal along with interest as awarded by the learned Tribunal in the Impugned Award, within a period of six weeks from today.

22. The enhanced compensation, as far as the claimants who are major, shall be released as a lump-sum, while for the appellants who are minor, would be governed by the schedule of disbursement as stipulated by the learned Tribunal.

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

NAVIN CHAWLA, J

SEPTEMBER 21, 2023/Arya/ss

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