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

Date of decision: 13.10.2023

\+ **MAC.APP. 500/2019**

SUNITA ARORA & ORS. ..... Appellants

Through: Mr.Ravi Sabharwal, Adv.

versus

MUKESH KUMAR & ORS. ..... Respondents

Through: Mr.JPN Shahi, Adv. (through VC)

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

C.M. NO. 19624/2019

1. This application has been filed by the appellants praying for condonation of 116 days delay in filing of the appeal.

2. For the reasons stated in the application, the delay is condoned. The application is allowed.

MAC.APP. 500/2019

3. The appeal has been filed challenging the Award dated 26.09.2018 (hereinafter referred to as 'Impugned Award')

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passed by the learned Motor Accident Claims Tribunal, East District, Karkardooma Courts, Delhi (hereinafter referred to as 'Tribunal') in Suit No.419/2016 (Unique Case I.D. No. MACT/11829/2015) titled as ***Smt. Sunita Arora & Ors. v. Sh.Mukesh Kumar & Ors.***.

4. At the outset, the learned counsel for the appellants submits that the respondent nos.1 and 2, that is the driver and owner respectively, are not necessary or proper parties in the appeal as the entire liability to pay the compensation has been fastened only on the respondent no.3, that is, the Insurance Company with no right of recovery granted. In view thereof, the service of notice on the respondent nos.1 and 2 is dispensed with.

5. It was the case of the claimants/appellants before the learned Tribunal that on 04.07.2014 at 6.00 p.m., Mr. Sachin Arora (hereinafter referred to as the 'deceased') was riding as a pillion rider on a motorcycle bearing registration no. DL-14SB-0501. When he reached NH-8, near Baoli Mor Tan Khelna, PS Pragpura, Jaipur (rural), Rajasthan, a Mahindra Pick-up bearing registration no. RJ-13GA-5463, being driven in a rash and negligent manner by the respondent no.1 herein, hit the motorcycle of the deceased, causing both the occupants to fall on the road, whereafter an unknown vehicle crushed the deceased. The Claimants filed the Claim Petition seeking compensation.

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INCOME OF THE DECEASED

6. The appellants challenge the Impugned Award on the assessment of the income of the deceased made by the learned Tribunal.

7. The learned counsel for the appellants submits that to prove the income of the deceased, the appellants had produced before the learned Tribunal the Income Tax Returns (in short 'ITR') of the deceased for the Assessment Year 2013-14 (showing the gross income of Rs.1,21,900/-), and the Assessment Year 2014-15 (showing the gross total income of Rs.2,81,700/-). He submits that in addition thereto, the appellants had also produced the statements of the bank accounts of the deceased maintained in the Axis Bank as also in the State Bank of India. Further, they had also examined Mr.Mohammad Arshad Muddassir (PW-2) to prove the ITR's; Mr.Nitish Sahdev, Supervisor, M/s Sarso International Private Limited (PW-3) to prove the Contract of Distributorship and Form 16A issued by the said firm; and Mr.Ashok Kumar, Proprietor of M/s Ashok Handle Industries (PW-4) to prove that the deceased was working with the said firm since 2012 and used to sell goods manufactured by them in Uttar Pradesh and Punjab for which he used to be paid commission of around Rs.22,000/- to 25,000/- per month.

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8. The learned counsel for the appellants further submits that in spite of the above evidence, the learned Tribunal has determined the income of the deceased only on the basis of the ITR for the Assessment Year 2012-13, while not relying upon the other evidence produced by the appellants. He submits that taking the overall view of the evidence led by the appellants, it would be evident that the income of the deceased has been grossly undervalued.

9. On the other hand, the learned counsel for the respondent no.3 submits that the ITR filed for the deceased for the Assessment Year 2014-15 has rightly been not relied upon by the learned Tribunal. He submits that the said return was filed after the date of the accident and the death of the deceased. He submits that similarly, PW-4, in his cross-examination, could not produce any document to substantiate his claim of making any payment to the deceased leave alone the payment of Rs.22,000/- to Rs.25,000/- per month.

10. The learned counsel for the respondent no.3 further submits that as far as PW-3 is concerned, Form 16A produced by him, in fact, showed that for the period 01.04.2013 to 31.03.2014, a payment of only Rs.83,600/-, as against the payment for the earlier Financial Year of Rs.1,21,900/-, had been made to the deceased. He submits that this shows that there was, in fact, a reduction in the income of the deceased. However, in spite of the same, the learned Tribunal has

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determined the income of the deceased based on the Financial Year 2012-13. He submits that therefore, the Impugned Award does not warrant any interference from this Court.

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

12. At the outset, I have to remind myself of the principles that are applicable to the claims filed for seeking compensation by the victims of a motor vehicle accident.

13. In ***Chandra alias Chand alias Chandraram & Anr. v. Mukesh Kumar Yadav & Ors.,*** (2022) 1 SCC 198, the Supreme Court, while holding that some amount of guesswork may be required for determination of the income of the deceased, warned that the same should not be totally detached from reality. It was held that:

> *"9…In the 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…"*

14. In ***K. Ramya v. National Insurance Co. Ltd.,*** 2022 SCC OnLine SC 1338, the Supreme Court has reiterated that documents such as income tax returns and audit reports along with other relevant documents are reliable evidence to

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determine the income of the deceased. It has further held as under:

> *"**13.** The Deceased in the present case was a businessman and during the proceedings before the Tribunal, the Appellants produced the relevant income tax returns, audit reports and other relevant documents pertaining to the commercial ventures of the Deceased to prove the loss of income attributable on account of his sudden demise. The Tribunal relied on the same and computed the income by taking an average of the income recorded in three prior financial years (FY 2000-2001, FY 2001-2002 and FY 2002-2003) to determine the compensation under the head of 'loss of income'.*
>
> ***14.** In contrast, the High Court set aside the same on the ground that the income earned was out of capital assets and cannot be said to have been earned out of personal skills of the deceased. It consequently went on to determine the income of the Deceased on a notional basis as per his educational qualification. Unfortunately, such an approach, in our opinion, is erroneous in view of the decisions of this court in Amrit Bhanu Shali v. National Insurance Co. Ltd. (2012) 11 SCC 738 and Kalpanaraj v. Tamil Nadu State Transport Corpn. (2015) 2 SCC 764 wherein this court has held that documents such as income tax returns and audit reports are reliable evidence to determine the income of the deceased. Hence, we are obliged to modify the compensation, especially when neither any additional evidence has been produced to showcase that the income of the Deceased was contrary to the amount mentioned in the audit reports nor it is the stand taken by the Insurance Company that the said reports inflated the income."*

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15. In determining the income of the deceased, the Court is not to seek proof beyond reasonable doubt. It is to be remembered that the intent of the legislation is to provide 'Just' compensation to the victims of the motor vehicle accidents; while the compensation cannot be a bounty, it should also not be tight fisted; it must be reasonable and fair.

16. In the present case, the appellants had produced before the learned Tribunal the ITR of the deceased filed for the Assessment Year 2014-15 which shows the gross total income of Rs.2,81,700/-. Though the said return had been filed after the date of the accident, the same cannot be totally ignored as it was also accompanied with the statement of bank accounts maintained by the deceased, which shows substantial amounts being deposited in the bank accounts. The appellants had also produced before the learned Tribunal PW-4 who deposed that the deceased used to sell the goods manufactured by him in Uttar Pradesh and in Punjab on a commission basis. Therefore, the learned Tribunal has erred in determining the income of the deceased only on the basis of the ITR for the Assessment Year 2013-14.

17. Keeping all these above evidence in view, in my opinion, the income of the deceased should have been determined as Rs.2,00,000/- per annum. It is ordered accordingly.

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18. The learned counsel for the appellants submits that the tax would not be payable by the deceased on the above amount for the relevant Assessment Year.

19. Accordingly, the loss of dependency is now re-determined as under:

2,00,000/- x 1/ 2 x 140/100 x 18= Rs. 25,20,000/-

LOSS OF CONSORTIUM

20. The next challenge of the appellants to the Impugned Award is on the compensation on the head of loss of *consortium* not being properly determined by the learned Tribunal.

21. I find merit in the submission.

22. In terms of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680, and as explained in ***United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and Others***, (2021) 11 SCC 780, both the parents are entitled to loss of *consortium* in their own right. Accordingly, the compensation towards loss of *consortium* shall stand enhanced to Rs.80,000/-.

DIRECTIONS

23. The respondent no.3 shall deposit the enhanced compensation amount along with interest at the rate of 9% per

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annum, as has been awarded by the learned Tribunal, with the learned Tribunal, within a period of eight weeks from today. The same shall be released in favour of the claimants in terms of the schedule of disbursal as stipulated by the learned Tribunal in the Impugned Award.

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

NAVIN CHAWLA, J

OCTOBER 13, 2023/ns/rp

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