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

Date of decision: 17.11.2023

+ **MAC.APP. 211/2021**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr.Salil Paul and Mr. Sahil Paul, Advs.
versus

SMT. BIBHA DEVI @ VIBHA KUMARI & ORS.
..... Respondents
Through: Mr.Sushil Kumar Pandey, Sr. Panel Counsel and Ms.Neha Yadav, Adv. for R-1 to R-5
Mr.Ujjwal Jain, Adv. for R-6 & R-7

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 29.01.2021 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, (South-District), Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 76120/2016 titled as *Smt. Bibha Devi @ Vibha Kumari & Ors. v. Gopi Ram & Ors..*

2. The claim petition was filed by the Legal Heirs of the deceased-Santosh Kumar under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') stating that on 15.07.2016 at about 10.00 AM the deceased was going



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on his motorcycle from his residence at Sangam Vihar, New Delhi to Faridabad. When he reached near Erore Garden, Surajkund, Faridabad, suddenly, a Dumper bearing registration no.HR-74-1533 (hereinafter referred to as the 'Offending Vehicle') came from the back side and hit the vehicle of the deceased and he was crushed under the Offending Vehicle. The deceased was taken to the B.K. Hospital, Faridabad from where he was referred to the Safdarjung Hospital, where he died on 16.07.2016. The learned Tribunal on the basis of the evidence led before it, held that the accident had occurred due to the rash and negligent driving of the Offending Vehicle by the driver/respondent no.6 herein, and awarded Rs.38,58,800/- in favour of the claimants/respondent nos.1 to 5 herein.

RIGHT OF RECOVERY

3. The appellant challenges the Impugned Award contending that the learned Tribunal has erred in not granting a right in favour of the appellant herein to seek reimbursement of the compensation paid by the appellant to the respondent nos.1 to 5 herein from the respondent nos.6 and 7.

4. The learned counsel for the appellant submits that it was the categorical case of the claimants/respondent nos. 1 to 5 before the learned Tribunal that the respondent no.6, who was driving the offending vehicle, that is, the Dumper bearing registration number HR-74-1553 owned by the respondent no.7, was not having a valid driving licence. In fact, he had been charge-sheeted under Section 3 read with Section 181 of the



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Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') for the said offence. He submits that the respondent no.6 and 7 did not contest the claim petition; they did not file their Written Statement nor appear before the learned Tribunal. He submits that on the other hand, the appellant produced Sh.Vaibhav Indracharya Burse, Administrative Officer of the appellant, as R3/W1, who stated that the appellant had also issued a notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 to the respondent no.7 herein (Ex.R3/W1/2), asking the respondent no.7 to produce the relevant documents, including the Driving Licence, however, no reply thereto was received. He had also relied on the Charge-Sheet (Ex.R3/W1/4).

5. The learned counsel for the appellant submits that the learned Tribunal, in spite of the above evidence on record, did not grant a right to the appellant to recover the compensation paid to the respondent nos.1 to 5/claimants from the respondents no.6 and 7. In support, he places reliance on the judgment of the Supreme Court in ***National Insurance Company Limited v. Swaran Singh and Others***, (2004) 3 SCC 297.

6. On the other hand, the learned counsel for the respondent nos.6 and 7 submits that the respondent no.6 was holding a valid Driving Licence. He submits that the respondent no.7 had verified the same at the time of employing the respondent no.6 in his services. Placing reliance on the judgment of the Supreme Court in ***Nirmala Kothari v. United India Insurance Co. Ltd.***,



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(2020) 4 SCC 49, he submits that therefore, the respondent nos.6 and 7 cannot be made liable to reimburse the appellant of the compensation paid.

7. I have considered the submissions made.

8. As contended by the learned counsel for the appellant and not denied by the learned counsel for the respondent nos. 6 and 7, and as is also recorded in the Impugned Award, the respondent nos. 6 and 7 remained *ex parte* before the learned Tribunal; they did not file their Written Statement; on the other hand, the appellant not only filed its Written Statement contending that it is not liable to pay the compensation to the respondent nos. 1 to 5 as the respondent no.6 was not holding a valid Driving Licence, but also relied upon the Charge-Sheet wherein the respondent no.6 had been charged with the offence under Sections 3/181 of the Act. The appellant also produced in evidence R3W1, whose deposition has been adverted to hereinabove.

9. Even in the reply to the present appeal, the Driving Licence of the respondent no.6 has not been produced by the respondent nos. 6 and 7, though a joint reply has been filed on their behalf. The claim of the respondent no.7/owner that he had verified the Driving Licence of the respondent no.6/Driver before employing him, therefore, also appears to be an afterthought, false, and cannot be accepted. I, therefore, find merit in the contention of the learned counsel for the appellant.

10. In view of the judgement of the Supreme Court in



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Swaran Singh (supra), though the appellant cannot deny its liability to pay the compensation awarded by the learned Tribunal in favour of the respondent nos. 1 to 5, it certainly would be entitled to claim reimbursement thereof from the respondent nos. 6 and 7.

11. It is, therefore, held that the respondent nos. 6 and 7 shall be liable to reimburse to the appellant the compensation paid by the appellant to the respondent nos. 1 to 5, along with the interest as has been awarded by the learned Tribunal by the Impugned Award. The Impugned Award shall stand modified to this extent.

INCOME OF THE DECEASED

12. The next challenge of the appellant to the Impugned Award is on the determination of the income of the deceased Santosh Kumar.

13. The learned counsel for the appellant contends that it was the own case of the respondent nos. 1 to 5 through the evidence of the respondent no.1 herein (PW-2)/wife of the deceased, that the deceased, at the time of the accident, was self employed as a Painter. The respondent nos.1 to 5 had, however, failed to produce any cogent evidence of the income of the deceased at the time of the accident. The learned Tribunal, however, erred in determining the income of the deceased based on his earlier employment and the salary received therefrom. The learned counsel for the appellant submits that it is the income of the deceased on the date of the accident that is relevant for



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determining the loss of dependency, and that his earlier income would be irrelevant for the same. He submits that in the absence of proof of income, the learned Tribunal should have taken the minimum wages notified by the State of Haryana for determining the loss of dependency.

14. On the other hand, the learned counsel for respondent nos.1 to 5 submits that the deceased was earlier working with ‘*Virtual Textile Glass Space Global Pvt. Ltd.*’, and the respondent nos.1 to 5 through PW-2 had proved the Bank Account Statement of the deceased (Ex.PW2/8) which showed the last salary of Rs.17,800/- received by the deceased for the month of May, 2015. The accident had taken place on 15.07.2016. He submits that it has to be presumed, and has been rightly presumed by the learned Tribunal, that the income of the deceased would only have increased after he left the job and started working as self-employed.

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

16. In the present case, the respondent nos.1 to 5 through PW-2 (respondent no.1 herein) had proved on record the last drawn salary of the deceased as Rs.17,800/- for the month of May, 2015. In ***Chandra v. Mukesh Kumar Yadav & Ors.***, (2022) 1 SCC 198, the Supreme Court has held that:

“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



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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 lower tier of minimum wage while computing the income.”

17. Recently, in its judgment dated 28.08.2023 passed in Civil Appeal 5461 of 2023, titled ***Kubrabibi & Ors. v. Oriental Insurance Co. Ltd. & Ors.***, the Supreme Court has reiterated as under:

“It is unfortunate that in a case of the present nature, the High Court while assessing the evidence available on record, has sought to seek strict evidence with regard to the income of the deceased. When the wife and children of the deceased were before the Court, they would not be in a position to secure all evidence when the deceased earning member was not in secure job. Despite the same we note that in the instant case, a perusal of the judgment and award passed by the MACT, would indicate that an effort was made to examine the owner of the two wheeler repair shop where the deceased was said to be working. The High Court has discarded the same on the ground that no documents, to indicate that he is the owner of the shop and he had employed three persons, has been produced.

In a matter of the present nature where the compensation is sought and even in the absence of definite proof of the income, the social status of the deceased is to be kept in perspective where such persons are employed in unorganized sector and the notional income in any event is required to be taken into consideration.”



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18. In the present case, as rightly observed by the learned Tribunal, the income of the deceased would have only increased with him leaving the job and starting to work as a self-employed. I, therefore, find no infirmity in the learned Tribunal assessing the income of the deceased as Rs.18,000/- per month for awarding the loss of dependency in favour of the respondent nos.1 to 5. The challenge of the appellant on this account is rejected.

INTEREST

19. The next challenge of the appellant is to the rate of interest awarded by the learned Tribunal. The learned counsel for the appellant submits that the learned Tribunal has awarded interest at the rate of 8% *per annum*, which is highly excessive.

20. I find no merit in the said contention. The accident in question had taken place on 15.07.2016. Keeping in view the rate of interest prevalent during the relevant period, I find the award of interest at the rate of 8% *per annum* to be reasonable and not warranting any interference.

21. In view of the above, the challenge of the appellant is rejected.

DIRECTIONS & CONCLUSION

22. This Court, by its *interim* order dated 22.07.2021, had directed that on the appellant depositing the entire awarded amount along with interest with the learned Tribunal, 60% thereof shall be released in favour of the respondent nos.1 to 5.



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23. Now, as the compensation amount awarded in favour of respondent nos.1 to 5 has been upheld by this Court, the entire remaining amount lying deposited with the learned Tribunal shall be released in favour of respondent nos.1 to 5 in terms of the schedule of disbursal prescribed by the Impugned Award. The appellant shall, however, have the right to recover the same from the respondent nos.6 and 7 herein.

24. The statutory amount deposited by the appellant shall be released to the appellant along with interest accrued therein.

25. There shall be no order as to costs.

26. The appeal, along with pending application, is disposed of in the above terms.

NAVIN CHAWLA, J

NOVEMBER 17, 2023

s/ss

Click here to check corrigendum, if any