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

Date of decision: 24.11.2023

+ MAC.APP. 184/2022
GAYANWATI & ORS. Appellants

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

versus

MUKESH & ORS. Respondents

Through: Mr.Sameer Nandwani, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 01.12.2020 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, North West, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.354/2017, titled *Smt.Gayanwati & Ors v. Sh. Mukesh & Ors.*

2. It was the case of the appellants, who were the claimants before the learned Tribunal, that on 15.01.2017, at about 07.45 a.m., the deceased Sh.Dudh Nath Yadav was driving his Yamaha Motorcycle bearing registration no.DL-8SM-4310. As he reached S Block, Mangol Puri, Delhi, in front of Durga Jewellers, one Tempo (TATA Dumper) bearing registration no. HR-29V-0908, which was being driven by its driver in a rash and negligent manner and at a high speed, hit the motorcycle of deceased. As a result of the accident, the deceased fell down on the road and





sustained fatal injuries. He was declared as 'brought dead' by the Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi, where he was rushed after the accident.

3. The limited challenge of the appellants to the Impugned Award is on the determination of the income of the deceased. The learned counsel for the appellants submits that the appellant no.1, that is the wife of the deceased, had tendered her evidence as PW-1 before the learned Tribunal. She stated that the deceased was working with Vaibhav Filling Station, A-Block, Community Centre, Vikas Puri, Delhi, under the Sales Promotion Scheme (Diesel, Lubricant) on commission basis with effect from November, 2016 and was earning more than Rs.30,000/- per month. She stated that the income of the deceased was increasing consistently. The claimants also produced before the learned Tribunal Mr.Yogesh Kumar Yadav from Vaibhav Filling Station as PW-2, who also deposed that the deceased was working with the said filling station under Sales and Promotion Scheme on commission basis with effect from November, 2016. He further produced the vouchers for the payment of commission paid to the deceased (Ex. PW2/3); TDS Certificate (Ex.PW2/4) in respect thereof; and Income Tax Returns of Vaibhav Filling Station for the Assessment Year 2017-18 (Ex.PW2/5), where the commission paid to the deceased was shown on the second page as Rs.60,000/-.

4. The learned counsel for the appellants submits that in spite of the above evidence on record, the learned Tribunal has erred in holding that the appellants/claimants have been unable to prove the income of the deceased and therefore, determined the income on the basis of the minimum wages for a graduate.





5. On the other hand, the learned counsel for the respondent no.3 submits that the deceased admittedly was not in a permanent job. He was at best working as commission agent and, therefore, had no regular source of income. He submits that the learned Tribunal has, therefore, rightly determined the income of the deceased on the basis of the minimum wages notified for a graduate.

6. I have considered the submissions of the learned counsels for the parties. As held by the Supreme Court in *Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121*, it is the income of the deceased at the time of the accident that is the determinative factor for purposes of determining the compensation payable under the head of loss of dependency.

7. In *Chandra @ Chanda @ Chandraram & Anr. v. Mukesh Kumar Yadav & Ors.*, (2022) 1 SCC 198, the Supreme Court has further held that in absence of the 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. Such guesswork, however, should not be totally detached from the reality.

8. In the present case, the appellants have been able to prove that the deceased was working with Vaibhav Filling Station under the Sale Promotion Scheme on a commission basis with effect from November, 2016. The vouchers showing the commission earned by the deceased were also placed on record, and the same show the commission of the deceased to be Rs.11,200/-, Rs.12,500/-, Rs.10,200/- and Rs.12,850/- as being paid every 15 days. The same was also supported by the TDS Certificate (Ex.PW2/4). Though there may be some merit in the submission of the learned counsel





for the respondent no.3 that the deceased was not in a permanent job, in my view, the same cannot alone be the determinative factor or sufficient to disregard the above evidence. Adoption of minimum wages by the learned Tribunal to determine the income of the deceased, therefore, in my opinion was erroneous.

9. The appellants had been able to prove that the deceased was earning approximately Rs.25,000/- per month at the time of the accident. In my view, therefore, the income of the deceased should have been determined at Rs.25,000/- per month for assessing the loss of dependency. It is ordered accordingly.

10. There is no other challenge by the appellants to the Impugned Award. Accordingly the compensation payable to the appellants towards the loss of dependency is re-calculated as under:

$$\text{Rs. } 25,000 \times 12 \times 110/100 \times \frac{3}{4} \times 11 = \text{Rs. } 27,22,500/-$$

11. The respondent no.3 shall deposit the enhanced compensation along with interest as awarded by the learned Tribunal in the Impugned Award, with the learned Tribunal within a period of six weeks from today. The same shall be disbursed in favour of the claimants in accordance with the schedule of disbursement as prescribed by the Impugned Award.

12. The appeal is disposed of in the above terms.

NAVIN CHAWLA, J

NOVEMBER 24, 2023/Arya

Click here to check corrigendum, if any

