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

*Date of decision:*12.07.2023

+ MAC.APP. 346/2023
 RELIANCE GENERAL INSURANCE CO LTD Appellant
 Through: Mr.A.K.Soni,Adv.

versus

SMT SAPNA TRIVEDI & ORS. Respondents
 Through: Mr.Amitabh Jha, Adv. for R-1
 to 4.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 34879/2023 (Exemption)

1. Allowed, subject to all just exceptions.

MAC.APP. 346/2023 & CM APPL. 34880/2023

2. This appeal has been filed challenging the Award dated 07.06.2023 passed by the learned Motor Accidents Claims Tribunal, North West, Rohini, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.875/2022.

3. On 09.07.2022, the respondent, that is, wife of the deceased along with the deceased had gone for morning walk at about 4.30 a.m. At around 5.15 a.m. when they reached at the Fashion Mall, Vardhman, Road No.43, the respondent no.1 sat on the cemented projected sitting place, and the deceased continued to walk. A vehicle

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MAC.APP. 346/2023



'offending vehicle') being driven by respondent no.5 in a rash and negligent manner and at a very high speed came from behind and hit the deceased. The deceased sustained grievous injuries and was taken to the Bhagwan Mahavir Hospital, where the doctors declared him 'brought dead'. The claim petition was thereafter filed by the respondent no.1, wife of the deceased; the respondent nos.2 and 3, the children of the deceased; and the respondent no.4, the mother of the deceased.

4. The appellant challenges the Impugned Award on two grounds:
- a) That as the offending vehicle was not having a valid and effective permit, that is, authorization to ply the offending vehicle within the territory of Delhi, as also a fitness certificate, and, therefore, the liability, if any, to pay the compensation was of the owner, that is the respondent no.6 and not of the appellant;
 - b) That the compensation has been awarded taking the income of the deceased at the minimum wages notified by the Government of NCT of Delhi into account, though, it was the case of the appellant that the Aadhar Card and School Leaving Certificate of the deceased shows that he was a resident of Kanpur, UP and therefore, the minimum wages notified by the State of Uttar Pradesh should have been made applicable while considering the compensation.



grounds. He submits that the appellant cannot be made liable for meeting the liability under the Impugned Award inasmuch as the offending vehicle did not have a valid and effective permit or the fitness certificate. He further submits that there was no evidence on record to establish that the deceased was a resident of Delhi or was working in Delhi for his livelihood.

6. On the other hand, the learned counsel for the respondent nos.1 to 4, placing reliance on the judgment of the Supreme Court in *National Insurance Co. Ltd.v. Swaran Singh & Ors.*, (2004) 3 SCC 297, submits that the learned Tribunal has already directed that the Insurance Company shall meet the liability under the Impugned Award, however, with a right of recovering the same from the respondent no.6. He submits that, therefore, the present appeal on the first ground has no merits.

7. On the second ground, which is on the income of the deceased, the learned counsel for the respondent nos.1 to 4 submits that there were four important circumstances which clearly show that the learned Tribunal has correctly taken the minimum wages as notified by the Government of NCT of Delhi for awarding the compensation. He submits that though the respondent nos.1 to 4 are also aggrieved of the Impugned Award inasmuch as it takes the minimum wages of an unskilled worker instead of taking of minimum wages as notified for a Matriculate, for determining the compensation, as far as the claim of respondent nos.1 to 4 for enhancement is concerned, they shall be filing a separate appeal for seeking such enhancement.



Award are as under:

- a) The respondent nos.2 and 3, children of the deceased, were born in Delhi, as is evident from the photocopy of their birth certificates (Ex.PW1/7 & Ex.PW1/8);
- b) The claimants had produced a photocopy of the Ration Card of the deceased as Ex.PW1/10, which has been issued by the Government of NCT of Delhi;
- (c) The respondent no.2, daughter of the deceased was studying in a school in Delhi, and this has been proved on record through evidence in form of School ID Card and the fee receipt as Ex.PW1/11 (Colly), and
- d) FIR and the Detailed Accident Report (Ex.PW1/1) mentions the local address of the deceased at Delhi.

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

10. As far as the first issue of the offending vehicle being driven without a valid permit or the fitness certificate, the learned Tribunal, placing reliance on the judgment of the Supreme Court in *Swaran Singh* (supra) and in *Shamanna & Anr. v. The Divisional Manager, The Oriental Insurance Company Limited & Ors*, (2018) 9 SCC 650, has rightly held that the appellant cannot avoid its liability to pay the compensation on the above grounds, however, it can recover the same from the respondent nos.5 and 6, that is, the driver and the owner, jointly and severely. I find no infirmity in the said directions.

Accordingly, the first challenge to the Impugned Award is rejected.



11. On the second challenge to the Impugned Award, the learned Tribunal has observed as under:

“28. However, in this case the petitioners have placed on record the birth certificate of petitioner no.2 Pratibha Ex.PW-1/7 and birth certificate of petitioner no.3 Anshika Ex.PW-1/8 (both daughters of deceased) which has been issued by North Delhi Municipal Corporation. The place of birth of petitioner no.2 is GBLK, JJ Colony Shakurpur. The place of birth of petitioner no.3 is A-438, Shakurpur, Delhi. The petitioners have also relied upon the ration card Ex.PW-1/10 wherein their residential address mentioned at M-168, JJ Colony Shakurpur, Delhi. The said ration card has been issued on 19.03.2013. In the DAR also, the IO has mentioned the residential address of deceased as D-142, Second Floor, Anand Vyas, Shakurpur, Delhi. The petitioners have relied upon the DAR and have not filed the separate petition. The respondent no.3 did not lead any evidence to prove that the deceased was not resident of Delhi. The authenticity of birth certificate of daughters of the deceased and ration card has not been challenged by the Ld. Counsel for respondent no.3 during the cross examination of PW-1. No suggestion has been put to PW-1 to prove that the deceased was not residing in Delhi before the accident. There is no evidence to show that the deceased was not residing in Delhi, except oral submissions made by Ld. Counsel for respondent no.3. The Aadhar card and Election ID card of deceased contained the permanent address of deceased and not current residence address. Thus it is proved that deceased was resident of Delhi at the time of accident in question, therefore, the income of the deceased should be assessed as per the prevailing Minimum Wages of Delhi as on the date of the said accident.”



evidence to come to the conclusion that the deceased was a resident of Delhi at the time of accident in question and, therefore, the income of the deceased should be assessed on the prevailing minimum wages of Delhi on the date of the accident.

13. I therefore, find no merit in the second challenge of the appellant as well, and accordingly, dismiss the present appeal as it is devoid of any merit. There is no order as to cost.

14. The appellant shall deposit the awarded amount with the learned Tribunal within a period of four weeks from today. The same shall be released in favour of the respondent nos.1 to 4 in accordance with the Impugned Award.

15. Needless to state that appeal of the respondent nos.1 to 4, if any, to the Impugned Award shall be considered on its own merit, remaining uninfluenced by the dismissal of the present appeal.

16. It is further reiterated that, as directed in the Impugned Award, the appellant shall have a right to recover the awarded amount from the respondent nos.5 and 6, subject to any challenge being laid by the said respondents in their own appeal against the Impugned Award, if any, and the outcome thereof.

17. The petition and the pending applications are disposed of in the above terms.

NAVIN CHAWLA, J

JULY 12, 2023

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MAC.APP. 346/2023

[Click here to check corrigendum, if any](#)