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

Date of decision:-16.01.2023

+ MAC.APP. 211/2020 & CM APPL. 26381/2020 (stay)
UNITED INDIA INSURANCE CO.LTD. Appellant
Through: Mr.Sankar N. Sinha, Adv.

versus

SH.RAM PRAKASH MISHRA AND ORS. Respondents
Through: Mr.Varun Sarin & Ms.Parul Dutta,
Advs. for R-1.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988, filed by the insurer, seeks to assail the award dated 10.07.2020 passed by the learned Motor Accidents Claims Tribunal in Petition no.76000/2016.
2. Vide the impugned award, the learned Tribunal has awarded compensation of a sum of Rs.6,26,818/- in the following heads

<i>MEDICAL EXPENSES :</i>	<i>Rs 2,19,903/-</i>
<i>PAIN & SUFFERINGS &ENJOYMENT OF LIFE :</i>	<i>Rs. 1,00,000/-</i>
<i>SPECIAL DIET, CONVEYANCE & ATTENDANT</i>	<i>Rs. 50,000/-</i>
<i>LOSS OF INCOME (16858 X 6)</i>	<i>Rs. 1,01,148/-</i>
<i>FUTURE LOSS OF INCOME</i>	<i>Rs. 1,55,767/-</i>
<i>TOTAL</i>	<i>Rs. 6,26,818/-</i>

3. As already noted in this Court's order dated 15.01.2021, the appellant is assailing the quantum of compensation only qua the sum of Rs.1,01,148/- awarded towards loss of income and a sum of Rs.1,55,767/- awarded towards future loss of income.

4. Learned counsel for the appellant submits that the respondent was residing in Pilibhit, Uttar Pradesh and therefore the minimum wages payable to a skilled person in Delhi could not have been taken as a yardstick for grant of compensation to him. Furthermore, even the minimum wages payable to a skilled workman in Delhi at the time of accident in December 2015 was only Rs.11,154/- and therefore, the learned Tribunal erred in taking the respondent's monthly income as Rs. 16,858/-, that too when he had not furnished any proof of his income. He, therefore, submits that the compensation awarded towards loss of income as well as future loss of income be suitably reduced in accordance with the minimum wages applicable to a skilled workman in Uttar Pradesh.

5. On the other hand, learned counsel for the respondent submits that the respondent was a graduate holding a degree of LL.B who had earlier been working with the Food Corporation of India (FCI). After his retirement, the respondent initially worked as an Advocate, whereafter he started working as a property dealer and was earning more than Rs. 30,000/- per month from the said business.

6. By placing reliance on the decision of the Apex Court in ***Chandaram vs. Mukesh Kumar Yadav (2022) 1 SCC 198***, he submits that even though taking into account the nature of business which the respondent was carrying out at the time of the accident where he used to receive commission from property deals and was, therefore, not able to file any income tax return, this

Court can take judicial notice of the fact that the respondent being a law graduate with a long experience of working at FCI would be earning much more than the monthly wages payable to a non-graduate skilled worker. While admitting that the monthly income of Rs.16,858/- taken into account by the learned tribunal for computing compensation was incorrect, he prays that at least the minimum wages of Rs. 12,142/-, as applicable to a graduate skilled worker working in a clerical capacity be considered for computing the respondent's loss of income and future loss of income.

7. Having considered the submissions of the learned counsel for the parties, I find that both the parties are *ad idem* that the monthly income of Rs.16,858/- as considered by the learned Tribunal was incorrect as the minimum monthly wages of a skilled workman in Delhi at the time of accident was only Rs.11,154/-, while that of a skilled graduate worker performing clerical duties was Rs.12,142/-. Even though during arguments, learned counsel for the appellant has urged that the respondent was residing at Pilibhit in Uttar Pradesh, a perusal of his cross examination before the learned Tribunal shows that his assertion, that he was residing at Sultanpur in Delhi at the time of the accident was not seriously disputed.

8. Coming to the respondent's plea that his monthly income should be treated as Rs. 12,142/-, I find that while it is correct that the respondent did not file any proof of his monthly income being Rs. 30,000/- at the time of the accident, the fact remains that there is no dispute that he was holding a LL.B degree at the time of the accident. It is also not seriously denied that after his retirement from the FCI, the respondent initially worked as an Advocate and was thereafter working as a property dealer. It is in the light of these admitted facts that the respondent's income has to be determined. In

this regard, reference may be made to the relevant extracts of para 10 of the decision of the Apex Court in **Chandaram (supra)** wherein while dealing with a case where no documentary evidence regarding income was produced, held as under:

"10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/ per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. 1 (2021) 2 SCC 166 C.A.@S.L.P.(C)No.6466 of 2019 Though the wife of the deceased has categorically deposed as AW1 that her husband Shivpal was earning Rs.15000/- 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 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.15000/ per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/ per month. In this case the accident was 2 (2013) 10 SCC 695 C.A.@S.L.P.(C)No.6466 of 2019 on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/ per month for the purpose of loss of dependency.”

9. By applying the ratio of the aforesaid decision, I am of the view that the respondent's plea that his monthly salary at the time of the accident be taken as Rs.12,142/- per month deserves to be accepted.

10. The impugned award is, accordingly, modified by directing that the compensation towards loss of income and future loss will be computed by taking his monthly salary as Rs. 12,142/- instead of the income of Rs. 16,858/- taken into account by the learned Tribunal. Consequently, the compensation towards loss of income awarded to the respondent stands reduced from Rs.1,01,148/- to Rs.72,852/- and the future loss of income stands reduced from Rs.1,55,767/- to Rs.1,12,192/-. The awarded amount will thereby stand reduced to Rs.5,54,947/- as against the awarded sum of

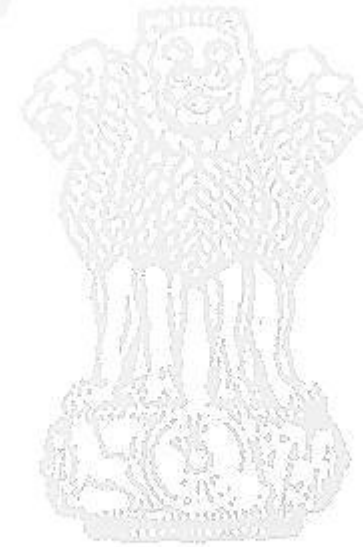
Rs.6,26,818/- under the impugned award.

11. Since the appellant has already deposited the entire awarded amount with the learned Tribunal, the learned Tribunal will release the balance amount in terms of this order along with accrued interest thereon in favour of the respondent/claimant. The differential amount of Rs.71,871/- along with accrued interest thereon will be refunded to the appellant.

12. The appeal is, accordingly, allowed to the aforesaid extent. The pending application stands disposed of.

(REKHA PALLI)
JUDGE

JANUARY 16, 2023
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