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

Date of decision: 28.08.2023

\+ MAC.APP. 269/2021 & CM APPL. 34835/2021

HDFC ERGO GENERAL INS. CO. LTD. ..... Appellant
Through: Mr.Pankaj Gupta, Adv for Ms.Suman Bagga, Adv.

versus

SMT. SHUKNI DEVI & ORS. ..... Respondents
Through: Mr.Bijay Kumar, Adv. for R-1 to 6.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. The present appeal challenges the Award dated 26.03.2021 passed by the learned Motor Accidents Claims Tribunal-South, Saket, New Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no.430/2018, titled ***Shukni Devi & Ors. v. Jaipal Chand & Anr.***

2. The learned counsel for the appellant submits that the learned Tribunal has erred in determining the loss of dependency in favour of the respondent nos.1 to 6/claimants by adding future prospects at 30% on the income of the deceased. He submits that as there was no proof of the deceased working in a permanent job, future prospect of income at the rate of 25% should have been added.

3. The learned counsel for the respondent nos.1 to 6 submits that

the deceased was working for gain as a cook in a permanent job at Delhi. He submits that therefore, the learned Tribunal has rightly added future prospects at the rate of 30%.

4. I am unable to agree with the submission made by the learned counsel for the respondent nos.1 to 6.

5. By the Impugned Award, as has been upheld by this Court in a separate judgement passed today in MAC.APP.395/2023, the learned Tribunal has held that there was no proof of the respondent nos.1 to 6 being employed in Delhi. In fact, the learned Tribunal has determined the income of the deceased based on the minimum wages notified by the State of Bihar.

6. In view of the above, and applying the principle laid down by the Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi & Ors.*** (2017) 16 SCC 680, only 25% of the income should have been added towards the future prospects. The Impugned Award shall stand modified to this extent.

7. The learned counsel for the appellant further submits that the respondent no.7 was not having a valid driving licence for driving a two wheeler vehicle. He submits that therefore, the learned Tribunal has erred in not granting a right to the appellant to recover the compensation amount paid to the respondent nos.1 to 6 from the respondent no.7. In support, he places reliance on the judgment of this Court in ***HDFC Ergo General Insurance Co. Ltd. v. Bindu Paswan & Anr.,*** Neutral Citation No:2023/DHC/000993, to submit that this Court in the appeal of the appellant arising out of the claim petition filed by Mr.Bindu Paswan, who had been injured in the same accident, has granted a right to the appellant to recover the compensation from

the respondent no.7.

8. Notice of this appeal was issued to the respondents vide order dated 05.10.2021. The office report dated 07.04.2022 records that the respondent no.7 has been duly served with the notice of this appeal. In spite of service of the notice, none has appeared for the respondent no.7.

9. In ***Bindu Paswan*** (supra), a Coordinate Bench of this Court, in relation to the claim of the person injured in the same accident, has already granted a right to recover the compensation paid by the appellant to the injured from the respondent no.7, by observing as under:

> *"8. In the light of the aforesaid, it is evident that the offending vehicle, a motor cycle was being driven by a person who did not have a driving licence and therefore, it was a clear case where there was a breach of the terms and conditions of the insurance policy. Consequently, the finding of the learned Tribunal that the appellant was liable to pay the compensation is unsustainable and is set aside. The appeal is, accordingly, allowed by modifying the impugned award to the extent it does not grant any recovery rights in favour of the appellant by directing that the appellant would be entitled to recover the awarded amount from respondent no. 2 in accordance with law."*

10. The Impugned Award shall, therefore, stand modified to the extent that the appellant shall be entitled to recover the compensation paid to the respondent nos.1 to 6 from the respondent no.7, in accordance with the law.

11. The learned counsel for the appellant submits that the compensation amount awarded by the learned Tribunal has been

deposited with the learned Tribunal in compliance with the order dated 05.10.2021. In compliance with the said order, 95% of the amount deposited was directed to be released in favour of the respondent nos.1 to 6 as per the scheme of disbursal prescribed in the Impugned Award.

12. As the compensation amount has been reduced by the present order, I direct the parties to appear before the learned Tribunal on 25th September, 2023 for the re-determination of the compensation payable to the respondent nos. 1 to 6 along with interest at the rate as prescribed in the Impugned Award. The learned Tribunal shall re-determine the compensation payable to the respondent nos.1 to 6 in terms of the present judgment. The compensation amount so re-determined, shall thereafter be released to the respondent nos.1 to 6 in accordance with the scheme of disbursal prescribed by the learned Tribunal in the Impugned Award. The excess amount deposited by the appellant shall be released to the appellant alongwith proportionate interest accrued thereon.

13. The statutory amount deposited by the appellant shall be returned to the appellant alongwith interest accrued thereon.

14. The appeal alongwith the pending application is disposed of in the above terms.

NAVIN CHAWLA, J

AUGUST 28, 2023/Arya/am