



2023:DHC:9280



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 20.12.2023***

+ MAC.APP. 152/2018 & CM APPL. 42005/2023
NATIONAL INSURANCE CO LTD Appellant
Through: Ms.Rakhi Dubey, Mr.Sandeep
Dubey & Mr.Bipin Dubey,
Advs.
versus

NISHI AND ORS Respondents
Through: Mr.Sunil Malhotra, Mr.Santosh
Shrivastav & Ms.Preeti, Advs.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 08.12.2017 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 450225/16, titled ***Ms.Nishi v. Sh.Vijender Singh & Ors..***

2. It was the case of the claimant, that is, the respondent no.1 herein, that on 16.06.2008, at about 9:45 PM, the deceased late Sh.Gaurav Beher was driving his scooter and as he reached near Dharam Kanta, Opposite Grover Transport, he was hit by a bus bearing registration no. UP-14T-9942 (hereinafter referred

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to as the 'Offending Vehicle'). He sustained grievous injuries in the said accident. He was taken to the nearby hospital, where the Doctor declared him as 'brought dead'.

3. Based on the evidence led by the parties, the learned Tribunal, in its Impugned Award, has held that the respondent no.1/claimant had been able to prove that the accident had taken place due to the rash and negligent driving of the Offending Vehicle by its driver.

4. On the issue of compensation, the learned Tribunal has taken the income of the deceased as Rs.10,058/- per month, observing as under:-

"21. That the petitioner has also placed on record the income tax return of the financial previous year 2007-2008 and as per the income tax return the income of the deceased is calculated Rs.1,20,700 of the last financial year i.e. 2007-2008 and the net income of the deceased was Rs. 1,20,700/- per annum and the copy of ITR of the year 2007-08 is Ex. PW1/16 and Ex. PW1/16A and the monthly income of the deceased is 10,058/- per month."

5. It is with the above finding that the appellant is aggrieved of, and has challenged the same by way of this appeal.

6. The learned counsel for the appellant submits that though the respondent no.1 claimed that the deceased was running his own shoe shop in Aradhana, AFWWA(L) A.F., Hindon Air Force Station, Ghaziabad, Uttar Pradesh, for the past more than 12 years, there was no cogent evidence led in support of this



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assertion. She submits that in support of the said assertion, PW-1, Sh. M.L. Kasturi, the Special Power of Attorney Holder of the respondent no.1, produced alleged rent receipts as Ex.PW-1/5 (Colly.). However, the said receipts did not show the payments being made by the deceased towards rent for any shop. They, in fact, show that the payment was being made towards a 'rebate'. She submits that in the absence of any proof with respect to the deceased running any shop, the learned Tribunal should have adopted the minimum wages for a graduate as the income of the deceased for the purposes of calculating the compensation towards loss of dependency.

7. Without prejudice to the above, she submits that in any case, the respondent no.1 produced the Income Tax Return filed by the deceased for the Assessment Year 2007-08, which was filed on 30.03.2008. The respondent no.1 has also produced the Income Tax Return of the deceased for the Assessment Year 2008-09, which was filed only on 30.07.2008, that is, after the accident. The same shows a substantial increase in the income of the deceased. However, the respondent no.1 did not produce any supporting documents in the form of account books or statement of the bank accounts of the deceased, which would justify such an increase in the income of the deceased. She submits that, therefore, the learned Tribunal, at best, could have taken into account the Income Tax Return of the deceased filed for the Assessment Year 2007-08 for determining his income.

8. She submits that the learned Tribunal in its Impugned

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Award has, while relying upon the Income Tax Return for the Financial Year 2007-08, determined the income of the deceased as Rs.1,20,700/-. This figure is also not supported by either of the Income Tax Returns.

9. On the other hand, the learned counsel for the respondent no.1 submits that even in the absence of other documents, the learned Tribunal has rightly relied upon the Income Tax Return filed for the deceased for the Assessment Year 2008-09. He submits that the deceased had earlier filed his Income Tax Return for the Assessment Year 2007-08, showing an annual business income of Rs.1,02,350/- and a total income of Rs.1,02,500/-. The Income Tax Return for the Assessment Year 2008-09, though filed after the death of the deceased, pertains to the income which he earned for the period prior to the date of the accident. It also does not show any substantial increase so as to cast any doubt on the authenticity of the same.

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

11. In the present case, there is no dispute on the finding of the learned Tribunal that the accident had been caused due to the rash and negligent driving of the Offending Vehicle. The only dispute is on the quantum of compensation awarded by the learned Tribunal in favour of the respondent no.1 towards loss of dependency.

12. For purposes of determining the same, the learned Tribunal, in my opinion, has rightly relied upon the Income Tax

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Return filed on behalf of the deceased for the Assessment Year 2008-09. It is to be noted that the deceased had earlier filed his Income Tax Return for the Assessment Year 2007-08 (Ex.PW1/16) (colly), on 24.03.2008, showing an income from the business of Rs.1,02,350/- and a total income of Rs.1,02,500/-. The same establishes that the source of income for the deceased was from his business.

13. Therefore, there is no merit in the submission of the learned counsel for the appellant that the income of the deceased should be determined on the basis of minimum wages for a graduate.

14. The Supreme Court in **Anjali & Ors. v. Lokendra Rathod & Ors.**, 2022 SCC OnLine SC 1683, has held as under:

“9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009-2010) of the deceased, which reflects the deceased's annual income to be Rs. 1,18,261/-, approx. Rs. 9,855/- per month. This Court in Malarvizhi v. United India Insurance CO. Ltd. (2020) 4 SCC 228 has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:

“10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased.”

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11. The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicant/s. In Sarla Verma v. Delhi Transport Corporation , this Court has laid down as under:

"16. ... "Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. ""

(Emphasis Supplied)

15. The Supreme Court in ***Kalpanaraj v. T.N. State Transport Corpn.*** (2015) 2 SCC 764 has held that even if the only documentary evidence available in support of the claim of income is an Income Tax Return, it is sufficient and must be given due weightage. It was held as under:

"8. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return.... "



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16. The above view was followed by the Supreme Court in ***K. Ramya v. National Insurance Co. Ltd.***, 2022 SCC OnLine SC 1338.

17. The Income Tax Return filed for the Assessment Year 2008-09 (Ex.PW1/17) (Colly.), though filed after the accident, does not show any substantial increase in the income of the deceased. The only increase shown is found to be reasonable and genuine. It will reflect the income of the deceased more proximate to the date of the accident. The learned Tribunal has, therefore, rightly relied upon the Income Tax Return filed for the Assessment Year 2008-09 for determining the income of the deceased and, in turn, the compensation payable to the respondent no.1 towards loss of dependency.

18. There is also no discrepancy in the income of the deceased assessed by the learned Tribunal. It appears that the learned Tribunal has rightly deducted the tax payable by the deceased from his income for determining the loss of dependency. This is in conformity with the judgment of the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi & Ors.***, (2017) 16 SCC 680.

19. In view of the above, I find no merit in the present appeal. The same is, accordingly, dismissed.

20. Needless to state that as there is no challenge to the recovery rights granted in favour of the appellant by the learned Tribunal, the same shall stand sustained.

21. By the *interim* order dated 09.02.2018, it had been

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directed that on the appellant depositing the entire awarded amount with up to date interest with the learned Tribunal, the learned Tribunal shall release 30% thereof in favour of the claimant in terms of the directions in the Impugned Award. The balance amount was directed to be kept in interest bearing fixed deposit receipts with a nationalized bank.

22. Now that the appeal stands dismissed, all amount that would otherwise have become due and payable to respondent no.1/claimant as on the date of the first release after this judgment, shall be released to the respondent no.1 in a lump sum. The balance amount shall continue to be released in favour of the respondent no.1/claimant in terms of the schedule of disbursement as prescribed by the learned Tribunal in the Impugned Award.

23. In case of any urgent need, the respondent no.1/claimant shall be entitled to move an appropriate application seeking further release of the compensation on an urgent basis.

24. The statutory amount deposited by the appellant be returned to the appellant along with interest accrued thereon.

25. There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 20, 2023/rv/AS

Click here to check corrigendum, if any

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