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

Date of decision: 28.08.2023

+ MAC.APP. 395/2023

SHUKNI DEVI & ORS. Appellants

Through: Mr.Bijay Kumar, Adv.

versus

JAIPAL CHAND & ANR. Respondents

Through: Mr.Pankaj Gupta, Adv. for
Ms.Suman Bagga, Adv. for R-
2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 43140/2023 (Exemption)

1. Allowed, subject to all just exceptions.

CM APPL. 43141/2023

2. This application has been filed by the appellants seeking condonation of 772 days in filing the present appeal.

3. The present appeal challenges the Award dated 26.03.2021 (in short, 'Impugned Award') 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.***

4. The learned counsel for the appellants submits that the

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him to file the appeal and had, in fact, already executed the necessary affidavits and signed the petition. It was only due to his own oversight that the appeal could not be filed.

5. On the other hand, the learned counsel for the respondent no.2 submits that the notice of the appeal filed by the respondent no.2 was issued and accepted by the appellants on 05.10.2021. In spite of accepting the notice, the present appeal was filed only on 07.08.2023, that is, with much delay. He submits that once the counsel had accepted notice on behalf of the appellants, at least on that occasion appeal should have been filed.

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

7. The learned counsel for the appellants has produced before me a duly attested affidavit dated 24.12.2021 of the appellants in support of the appeal. It appears that the appellants had given instructions to the counsel to file the appeal, having received the notice of the appeal filed by the respondent no.2. Once the counsel has taken upon himself the blame for the non-filing of the appeal within time due to his own inadvertence, and I have no reason to disbelieve the same, in my opinion, the appellants have made out sufficient cause for condoning the delay in filing of the appeal. This being an appeal seeking enhancement of the compensation for a motor vehicle accident, in my opinion, the application seeking condonation of delay warrants for adoption of a liberal approach.

8. Accordingly, the delay is condoned.

9. The application is allowed.

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10. This appeal has been filed by the appellants, challenging the Impugned Award on the ground that the learned Tribunal has erred in determining the income of the deceased, late Shri Rupendra Ram, on the basis of the minimum wages notified by the State of Bihar for unskilled labour.

11. The learned counsel for the appellants submits that the appellants had examined the appellant no.1, as PW-1. In her statement, she stated that the deceased was working as a cook in Delhi. The appellants also examined Mr.Bindu Paswan, as PW-2, who was also injured in the accident. He also stated that the deceased at the time of the accident was working as a cook in Delhi. The learned counsel for the appellant submits that even the Detailed Accidents Report recorded the address of the deceased as one in Delhi. He submits that the learned Tribunal has, therefore, erred in determining the income of the deceased on the basis of the minimum wages notified by the State of Bihar, only on the ground that the Aadhaar Card of the deceased recorded the address of the deceased as in Bihar. He submits that the Aadhaar Card is not a proof of residence/domicile.

12. The learned counsel for the respondent no.2 submits that in the present case, barring the oral assertions of the two witnesses stating that the deceased was working for gain as a cook in Delhi, no cogent evidence thereof was led by the appellants; neither the alleged employer was examined by the claimants nor any other documentary proof was placed on record by the appellants in support of their assertions that the deceased was working for gain in Delhi. In fact, in



working for gain in Delhi.

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

14. The learned Tribunal while adopting the minimum wages notified by the State of Bihar for determining the income of the deceased, has observed as under:

“24. PW-1 stated that the deceased was her husband. At the time of accident, her husband was working as Cook and he was earning Rs. 20,000/- per month, however, she has not placed on record any document of the occupation and income of her deceased husband. Hence, the Tribunal has no option but to take the income of petitioner at minimum wages for an 'unskilled person' prevailing in Bihar because all the documents reflected that the petitioner and his family are the permanent resident of Bihar. PW 1 has also admitted that the Aadhar Card of the deceased has mentioned the address of Bihar and her deceased husband has an account in Bihar. She has got exhibited the pass book as Ex. PW 1/DA. As on the date of accident minimum wages of unskilled person in Bihar were Rs. 6,700/-, therefore, the net salary of the deceased comes to Rs. 6, 700/- p.m. for the assessment of the future loss of income.”

15. Mere vague assertions of PW-1 and PW-2, in absence of any documentary or other proof of the deceased being a resident of Delhi or working for gain in Delhi, cannot be sufficient to hold that the deceased was, in fact, working for gain in Delhi on the date of the accident. The employer of the deceased and, in fact, of even PW-2, who was also injured in the accident, was not examined. The appellants have not placed on record any documents in the form of Lease Deed, Electricity Bill, etc., to show that the deceased was a



resident of Delhi. His bank account also remained at Bihar; so was his Aadhaar Card.

16. For the above reasons, I find no fault in the learned Tribunal determining the income of the deceased based on the minimum wages as notified by the State of Bihar for unskilled workers.

17. I, therefore, find no merit in the present appeal. The same is dismissed, with no orders as to costs.

NAVIN CHAWLA, J

AUGUST 28, 2023/Arya/am

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