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

Date of decision: 16.10.2023

\+ MAC.APP. 460/2023 & CM APPL. 51307/2023

ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr.Pradeep Gaur, Ms.Sweta Sinha, Advs.

versus

REENA RAGHAV AND ORS ..... Respondents
Through: Mr.Anshuman Bal, Adv.for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 07.07.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, South East, Saket, New Delhi (hereinafter referred to as the 'Tribunal') in MACT Case no.452/2019, titled ***Reena Raghav. v. Momin & Ors.***.

2. The above Claim Petition had been filed by the respondent no.1/claimant herein seeking compensation for the death of her son Master Sanidhya Raghav (hereinafter referred to as 'deceased') aged about 5 years. It was the case of the claimant that on 07.05.2019 at about 8 pm, the deceased was going on a scooty with his father Sh.Sumeet Raghav, who was also a victim in the same accident. Upon reaching Chowki Vardhmanpuram near Manandhan Mandir, Ghaziabad, a bus bearing registration no. UP-15DT-6742, being driven in a rash and negligent manner by the respondent

no.2 herein, came and hit the Scooty from behind. As a result of the impact, both the occupants fell on the road and suffered grievous injuries. The deceased was removed to Yashoda Hospital, Ghaziabad, where he unfortunately succumbed to his injuries on 09.05.2019.

LOSS OF DEPENDENCY

3. The appellant challenges the Impugned Award contending that as the deceased was only a five year old child, therefore, the loss of dependency should have been determined on a notional basis and not by applying the minimum wages of a skilled worker as notified by the State of Uttar Pradesh.

4. I am unable to find any merit in the said contention of the learned counsel for the appellant.

5. This Court in ***United India Insurance Company Ltd. v. Jamaluddin Khan & Ors*.,** NC No.2023:DHC:6242, after a detailed examination of the precedents in this regard, has observed as under:

> *"20. The above judgments, therefore, have not laid down the basis on which notional income in case of a child is to be determined by the Tribunal, but have, on facts of those cases, held that the notional income determined by the learned Tribunal did not warrant any interference.*
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> *21. In view of the above decisions of the Supreme Court and of this Court, in my opinion, <u>the most reasonable basis for determining the loss of dependency, even in the case of a minor, would be the minimum wages notified by the State Government where the minor resides at the time of the accident.</u> As the notional income is being determined on basis of the minimum wages, I deem it appropriate also to add future prospects to such income at the rate of 40% by applying the principle laid down by the Supreme Court in* ***National Insurance Company Limited v. Pranay Sethi And Others,*** *(2017) 16 SCC 680.*
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> *22. Accordingly, it is directed that the compensation towards loss of dependency shall be assessed by taking*

minimum wages as notified by the Government of NCT of Delhi for the relevant period, that is 04.12.2017 for a skilled worker; 40% is to be added towards future prospects to such income; multiplier shall be 18.

23. Out of the above amount so assessed, deduction has to be made towards the personal and living expenses of the deceased. As the deceased was a bachelor, 50% has to be deducted on account of personal and living expenses in terms of the judgment of the Supreme Court in ***Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation &Anr.,*** *(2009) 6 SCC 121, and* ***United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur & Ors.,*** *(2021) 11 SCC 780.*

24. The learned counsel for the appellant submits that in case of death of a child, the loss assessed should be confined to only 1/3rd of the compensation amount that would otherwise be determined, that is an additional 2/3rd amount be deducted from the notional loss of dependency as determined by the methodology stipulated herein above.

25. I find no merit in the above submission. In my view, once the deduction towards personal expenses has been made, there can be no further deduction for determination of the loss of dependency. The method suggested by the learned counsel for the appellant would lead to a double deduction on the same reasons; this cannot be allowed."

(emphasis supplied)

6. In the present case as well, it had been established on record that the child was studying in the Delhi Public School, Raj Nagar, Ghaziabad. His mother, that is, respondent no.1 herein has completed her MBA, while his father was a diploma holder and Mechanical Engineer and was an Income Tax payee. I therefore, find no fault in the learned Tribunal adopting the minimum wages of a skilled worker as notified in the State of Uttar Pradesh for determining the loss of dependency.

RATE OF INTEREST

7. The next challenge of the appellant to the Impugned Award is on the

rate of interest awarded by the impugned Award.

8. The learned counsel for the appellant submits that the prevailing rate of interest as notified by the Reserve Bank of India, appearing on the Google Search Engine, varied from 5.70% p.a. to 6.40% p.a. He submits that, therefore, awarding interest at the rate of 9% p.a. is exorbitant and without any basis. In support of the submission, he places reliance on the following judgments of the Supreme Court, which had granted a lesser rate of interest as compared to what has been granted by the learned Tribunal**, *Vimla Devi & Ors. v. National Insurance Co. Ltd. & Ors*****.**, (2019) 2 SCC 186; ***Inayath Rajasab Attar v. Shantavva,*** in Civil Appeal no. 2526 of 2012 decided on 19.02.2020 ; ***Dharampal & Ors. v. U.P. State Road Transport Corporation*** (2008) 12 SCC 208; ***Abati Bezbaruah v. Deputy Director General Geological Survey of India & Anr.*** (2003) 3 SCC 148; ***Tamil Nadu State Road Transport Corporation Ltd. v. S. Rajapriya & Ors.,*** (2005) 6 SCC 236; ***R. K. Malik & Anr. v. Kiran Pal & Ors.,*** (2009) 14 SCC 1; and ***Sri Benson George v. Reliance General Insurance Co.Ltd & Anr.,*** 2022 SCC OnLine SC 2

9. Further, placing reliance on the judgment of this Court in ***National Insurance Co. Ltd. v. Yad Ram & Ors.*** 2023 SCC OnLine Del 1849, he submits that the Tribunal having granted interest at a rate higher than the one prevailing around the time of the accident, the same deserves to be reduced.

10. On the other hand, the learned counsel for the respondent no.1, who appears on advance notice, submits that the learned Tribunal has rightly awarded interest at the rate of 9% p.a..

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

12. In ***Yad Ram*** (supra), this Court has opined that the rate of interest awarded on compensation payable should be decided on a case-to-case basis, rather than having a fixed measure of the same, as what may be reasonable in one case may not be so in another.

13. In this case, the accident had taken place on 07.05.2019, while the Impugned Award came to be passed on 07.07.2023. The learned Tribunal in exercising its discretion to determine the rate of interest placed reliance on the judgment of the Supreme Court in ***Erudhaya Priya v. State Express Transport Corporation Ltd.,*** 2020 SCC OnLine SC 601, wherein the Supreme Court had enhanced the given interest from 7.5% to 9% per annum for an accident that took place on 16.08.2011, while the Award was passed on 20.10.2014.

14. Apart from making an oral submission on the prevailing rate of interest, and that too from some Google Internet search, the appellant has not filed on record any document to show the rate of interest that was prevailing between 2019 to 2023. I, therefore, do not deem it appropriate to interfere with the rate of interest awarded by the learned Tribunal in the Impugned Award.

CONCLUSION AND DIRECTIONS

15. Accordingly, I find no merit in the present appeal. The appeal along with pending application is dismissed. There shall be no order as to costs.

16. The statutory amount deposited by the appellant be released in favour the appellant along with interest accrued thereon.

NAVIN CHAWLA, J

OCTOBER 16, 2023/Arya/rp