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

Date of decision: 04.08.2023

\+ **MAC.APP. 881/2019 & CM APPL. 32486/2022**

RAM RATI & ANR ..... Appellants

Through: Mr.Anshuman Bal, Adv.

versus

UNITED INDIA INS CO LTD & ORS ..... Respondents

Through: Mr.Pankaj Seth, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellants challenging the Award dated 05.04.2019 passed by the learned Motor Accidents Claims Tribunal, South East District, Saket Court, New Delhi in MACT No.985/2017 (hereinafter referred to as the 'Tribunal') awarding compensation of Rs.14,69,208/- to the appellants/claimants, along with the interest @ 9% per annum from the date of the filing of the Claim Petition till its realization.

2. The limited challenge of the appellants is to the assessment of compensation by the learned Tribunal towards financial loss for the family. The learned Tribunal has observed that as the deceased was not earning at the time of the accident, his income will be assessed based on the minimum wages in Haryana for a graduate (Technical) at the time of the accident, which was Rs.9,518/- per month.

3. The first ground of challenge of the appellants to the Impugned Award is on the assessment of the notional income of the deceased.

4. The learned counsel for the appellants submits that the deceased had completed his Bachelor of Technology (Mechanical Engineering) from the Maharshi Dayanand University, Rohtak (hereinafter referred to as the 'University') in May, 2017. The appellant no.2, in his statement before the learned Tribunal, had stated that the deceased had been offered a job with a salary of Rs.30,000/- per month. He places reliance on the judgments of this Court in ***Raj Bala & Anr. V. Sumit Dahiya & Ors***. 2019 (1) TAC 760 (Del.) and ***Ram Vishal Gupta & Ors. v. Shokeen & Ors. (Cholamandlam Gen Ins Co Ltd.),*** Neutral Citation No. 2019:DHC:4671, and submits that the income of the deceased should not have been taken less than Rs.26,600/-. He submits that in ***Raj Bala*** (supra), the Court had assessed the notional income of a student, who was studying in the same University as the deceased. The said student, in fact, had not even completed his Bachelor of Engineering, like is the case of the deceased herein. The accident in the said case had occurred on 28.12.2012, whereas in the present case, the accident had taken place on 04.09.2017. He submits that keeping in view the inflation, the notional income of the deceased should be assessed at an even higher amount.

5. On the other hand, the learned counsel for the respondent no.1 submits that no fault can be found in the assessment of the income of the deceased made by the learned Tribunal. He submits that there was no documentary proof of any job offer made to the deceased

prior to the accident. He further submits that in the absence of any cogent proof of the income, the learned Tribunal has adopted a fair method by relying upon the minimum wages for a graduate (Technical) as notified by the Government of Haryana.

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

7. In ***Raj Bala*** (supra), this Court has held that the Claims Tribunal has to assess the earning capacity of the deceased student pursuing a professional course considering the nature of the professional course being pursued by the deceased and the prospects of his income after completing the course. On facts of that appeal, considering a motor vehicle accident that had taken place on 28.12.2012, and in which the deceased aged 21 years was a final year student of B.Tech at the same University as deceased herein, this Court held as under:

> *"8. In the present case, the deceased was a final year student of B.Tech, at Maharshi Dayanand University, Rohtak. The deceased had successfully completed three years of his four years degree programme. On successful completion of B.Tech., the deceased would have had a successful career. M/s Tech Indira IT Solutions Pvt. Ltd., had given placement offer of Rs.3,20,000/- per annum to the deceased. This Court is of the view that the deceased would have certainly earned higher amount in his lifetime but the earning capacity of the deceased is taken as Rs.26,600/- per month (Rs.3,20,000/- per annum) since the claimants have restricted their claim to the above amount. This case is squarely covered by the well-settled principles of law laid down by Supreme Court and this Court in the aforesaid cases.*

> *The earning capacity of the deceased is taken as Rs.26,600/- per month (Rs.3,20,000/- per annum). The Claims Tribunal has taken future prospects of 40% which is fair and reasonable and is upheld."*

8. Though, in the above case, the Court relied upon the placement offer received by the deceased therein, at the same time, held that the deceased would have certainly earned a higher amount in his lifetime than the offer that was placed on record.

9. In ***Ram Vishal Gupta*** (supra), this Court observed as under:

> *"3. The learned counsel for the appellant relies on the dicta of the Supreme Court in Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & Anr. (2015) 2 SCC 180. He submits that in a related circumstance, the Supreme Court has granted a higher compensation apropos a 19 year old medical student, who was pursuing his MBBS course but lost his life on account of a motor-vehicular accident. The Supreme Court had referred to the decision in Arvind Kumar Mishra v. New India Assurance Co. Ltd. and Anr. (2010) 10 SCC 254, and had found it appropriate to assume his future income as Rs. 25,000/- per month in the year 2013 apropos the accident which had occurred in the year 2002. It reasoned as under:-*
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> *"9. We have heard the learned counsel for the parties. In our considered view, the deceased was 19 years old and was pursuing his medical degree with good marks at the time of the accident. With respect to the future income of students pursuing professional courses we refer to Arvind Kumar Mishra v. New India Assurance Co. Ltd. [(2010) 10 SCC 254:(2010) 4 SCC (Civ) 153: (2010) 3 SCC (Cri) 1258] , wherein this Court held as under: (SCC p. 258, para 14)*
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> *"14. On completion of Bachelor of Engineering (Mechanical) from the prestigious institute like BIT, it can be reasonably assumed that he would have got a good job. The appellant*

has stated in his evidence that in the campus interview he was selected by Tata as well as Reliance Industries and was offered pay package of Rs 3,50,000 per annum. Even if that is not accepted for want of any evidence in support thereof, there would not have been any difficulty for him in getting some decent job in the private sector. Had he decided to join government service and got selected, he would have been put in the pay scale for Assistant Engineer and would have at least earned Rs 60,000 per annum. Wherever he joined, he had a fair chance of some promotion and remote chance of some high position. But uncertainties of life cannot be ignored taking relevant factors into consideration. In our opinion, it is fair and reasonable to assess his future earnings at Rs 60,000 per annum taking the salary and allowances payable to an Assistant Engineer in public employment as the basis."

10. The Tribunal and the High Court have not taken into proper consideration that the deceased was a student of medicine at the time of the accident while determining his future income. The courts below have wrongly ascertained the future income of the deceased at only Rs 18,000 per month, which in our view is too less for a medical graduate these days. Therefore, the courts below have failed in following the principles laid down by this Court in this aspect in the above case.

11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation 2019:DHC:4671 MAC.APP. No.266/2019 Page 5 of 11 and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. ..... "

4. In Ashvinbhai Jayantilal Modi (supra), the Court had assumed Rs. 60,000/- per annum, as the earnings of the student who was still pursuing his *degree in Bachelor of Engineering (Mechanical) from a prestigious institute like B.I.T. It had considered that such students were interviewed by big companies such as Tata as well as Reliance Industries and have been offered pay packages of upto Rs. 3.5 lacs p.a. It was reasoned that even a higher package was not to be considered for BE (Mechanical) Graduate from BIT. A person so qualified, if he decided to join government service could have gotten employed and he would have been put in the pay scale for Assistant Engineer for which he would have earned atleast Rs. 60,000/- per annum. The said amount was taken as the loss of his future earnings.*

5. What is gleaned from the above is that the circumstance of each individual will have to be seen apropos her/his academic record, the Institute or the University from which the person was pursuing the academic/ professional course and the likely employment which such a person would get or other economic activities that would engage him for remuneration. In each of the cited cases, the victims of motor vehicular accident were still pursuing their studies and despite the improbabilities of life, the Court had assumed that they would qualify and/or would otherwise in due course, be employed or earn a certain amount per month. In the present case, the calculation of loss of income was based simply on the minimum wage notified for a Graduate. If the deceased was pursuing his 2nd year in MCA, he would have been a cut above the other students who have completed only a BCA. Upon completion of MCA, he would, in effect, be more qualified and would be more likely to get employed and with a higher pay package than the students who were merely BCA degree holders. The learned counsel for the appellant submits that Krishna Institute of Engineering and Technology, Ghaziabad was affiliated with Dr. A.P.J. Abdul Kalam, Technical University at Lucknow and it had placed on record the minimum I and the maximum pay packages offered to its students through campus placements.

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> *7. In the instant case, the deceased was 23 years old on the date of the accident in the year 2017. The applicable minimum wage in Delhi at that time was Rs. 17,916/- for graduates. Surely a person holding a BCA degree and/or pursuing 2nd year of MCA would get a higher amount. For a 19 year old medical student, the Supreme Court in **Ashvinhhai Jayantilal Modi** (supra) had, in 2015, considered prospective salary as Rs. 25,000/- for an accident which happened in the year 2002; while in **Bharti Axa General Insurance Company Ltd. vs. Upender Kumar Shastri & Ors. (supra)** the Court had considered minimum monthly earnings at the rate of Rs. 27,600/- for the accident that happened in 2014 for an 18 year old student of B.A. (Hons.). With the passage of time, pay packages linked to inflation and the amount payable would also increase. In view of the above, for the instant case, the minimum amount payable to a student pursuing his second year Masters IIT Computer Application, is taken as Rs. 25,000/."*

10. In view of the above precedents, I am of the opinion that in the present case, the learned Tribunal has erred in placing reliance on the notional wages notified by the State of Haryana for assessing the loss of income and for determining the compensation payable to the appellants.

11. As noted hereinabove, the appellant had already completed his Bachelor of Engineering in Mechanical Engineering from the University. He was on the threshold of a golden career in front of him, which was run short by the accident. Taking into account the general level of income around the time of accident, in my opinion, a notional income of Rs.30,000/- per month should have been considered by the learned Tribunal. The appellants challenge the

impugned Award also on the ground that by the Impugned Award, no amount has been awarded by the learned Tribunal towards the loss of consortium. The learned counsel for the appellants places reliance on the judgment of the Supreme Court in ***National Insurance Company Ltd. v. Pranay Sethi & Ors***. (2017) 16 SCC 680 in support of this challenge.

12. I find merit in the submissions made.

13. In ***Pranay Sethi & Ors.*** (supra), it has been held that in the case of death due to the motor accident, the claimant shall be entitled to loss of consortium @Rs.40,000/-. In ***United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur & Ors.,*** (2021) 11 SCC 780, it has been held that this amount is for each of the claimants.

14. Accordingly, the claimants shall be entitled to an additional amount of compensation on account of loss of consortium equivalent to Rs.80,000/-.

15. The revised compensation stands as under:-

Sl. No.	Heads	Awarded by Tribunal in Rs.	Awarded by the High Court in Rs.
1.	Income of the deceased per month	9,518/-	30,000/-
2.	Add-Future Prospects @ 40%	3,807/-	12,000/-
3.	Less-Personal Expenses of the deceased 50 %	6,662/-	21,000/-
4.	Monthly loss of dependency	6,663/-	21,000/-
5.	Annual loss of dependency	79,956/-	21,000/- x 12 = 2,52,000/-
6.	Multiplier	18	18

7.	Total loss of dependency	14,39,208	45,36,000/-
8.	Loss of Consortium		40,000/-x 2 =80,000/-
9.	Funeral expenses	15,000/-	15,000/-
10.	Loss of estate	15,000/-	15,000/-
	Total compensation		46,46,000 – (minus) 14,69,208/- **= 31,76,792/-**

16. Accordingly, the Impugned Award is modified and the claimants are held entitled to loss of dependency of Rs.45,36,000/-. The appellants shall also be entitled to interest at the rate of 9% per annum on the compensation amount from the date of filing of the Claim Petition till the deposit of the same by the respondent no.1 before the learned Tribunal. The amount, remaining outstanding to be deposited in terms of the Impugned Award and this judgment, shall be deposited by the respondent no.1 with the learned Tribunal within a period of six weeks from today. On such deposit, the same shall be released to the appellant in terms of the schedule prescribed by the Impugned Award, with the amount that would have become payable as on the date of the first release after this order, being released immediately.

17. The appeal is allowed in the above terms. The pending application also stands disposed of.

NAVIN CHAWLA, J

AUGUST 4, 2023
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