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

Date of decision: 28.11.2023

+ **MAC.APP. 503/2023 & CM APPL. 58461/2023**
THE ORIENTAL INSURANCE COMPANY LTD

..... Appellant

Through: Mr.JPN Shahi, Adv.

versus

MOHD TUFAIL DECEASED THROUGH LRS MS
GULSHAN PARWEEM AND ORS Respondents

Through: Mr.Aatreya Singh, Adv. for R-1
to R-5.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 11.08.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-01, (Central), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 171/2023 titled *Mohd. Tufail deceased through Smt.Gulshan Parween & Ors. v. Promod Saini & Ors.*

2. It was the case of the claimants, that is, the respondent nos.1 to 5 herein, before the learned Tribunal that on 05.12.2022 at about 10:38 AM, the deceased Mohd. Tufail @ Mohd. Tufel had been hit by a DTC bus at DBG Road



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Dispensary Cut, Today Hotel, Paharganj. The deceased was rushed to the Lady Harding Hospital, however, he died on 06.12.2022.

3. Based on the evidence led, the learned Tribunal by way of the Impugned Award has held that the accident resulting in the death of the deceased was caused due to the Offending Vehicle, that is, the bus bearing registration no DL1PD5093, being driven in a rash and negligent manner. The learned Tribunal awarded a sum of Rs.36,38,345/- along with interest at the rate of 9% per annum as compensation in favour of respondent nos.1 to 5.

Loss of Dependency

4. The appellant is aggrieved of the compensation awarded in favour of the respondent nos. 1 to 5 on the head of loss of dependency. The learned counsel for the appellant submits that the deceased was a resident of Bihar, as is evident from his Aadhar Card. He submits that the learned Tribunal has erred in placing reliance on the copy of the Election I-Card and the alleged original voting slip and voting list produced by the claimants as Ex.PW1/6, Ex.PW1/7 (colly) and Ex.PW1/8, as these were not properly proved in evidence. He submits that once it is proved that the deceased was a resident of Bihar, the minimum wages as applicable in the State of Bihar should have been taken into account by the learned Tribunal for assessing the income of the deceased.



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5. I am unable to accept the above submission of the learned counsel for the appellant.
6. The learned Tribunal has dealt with the above issue in detail and has observed as under:-

“7.6. Now coming to the Income of the Deceased. The petitioners have claimed that Md. Tufail (deceased) was working as ‘vendor’ and used to sell clothes in Pahar Ganj, Delhi, and prior to that, he was doing labour work at Pahar Ganj, Delhi, and was earning Rs.20,000/- per month. The petitioners have further claimed that Md. Tufail (since deceased) was working and residing in Delhi for last more than 13 years. In support of their such claim, the petitioners had filed on record copy of election I/Card of Mohd. Tufail (since deceased) Ex. PW 1/ 8, original certificate issued by MLA Moti Nagar Ex. PW 1/6 to the effect that the deceased Md. Tufail was resident of 376, Rama Road, Jakhira and used to work in Pahar Ganj, original voting slip and voting list pertaining to Mohd. Tufail (since deceased) Ex. PW 1/7 (Colly).

7.7. Perusal of Ex. PW1/ 6 (photocopy of voter I/ Card) of deceased Mohd. Tufail reveals that the deceased was resident of 376, Rama Road, Jakhira, Rakhi Market, Patel Nagar, Delhi. Ex.PW1/7 (colly) (certificate issued by MLC concerned) reveals that Mohd. Tufail (since deceased) was residing in Jhuggi No. 376, T House, Rakhi Market, Rama Road, Jakhira and he used to go to Paharganj for doing his work. Ex. PW1/7 (colly) electoral roll of assembly constituency no. and name 25-Moti Nagar and 1-T-Huts, Rakhi Market, Rama Road, Zakhira, reveals the name of Md. Tufail S/o Mohd. Taiyab, H. No. 376 at serial no. 442. Furthermore, perusal of the DAR filed by the investigating agency, itself reveals that one person, who told his name as Md.Kaleem S/o Jahir, R/o L-116, Laxmanpuri, Nabi



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Karim, Delhi, met the police in the hospital stated that the said patient was Mohd. Tufel S/o Mohd. Tayab and they both live together and run a shop on footpath, at Main Bazar, Pahar Ganj, Delhi, and that he visited the said hospital when he came to know about the accident.

7.8. It is pertinent to mention here that respondent no.3-insurance company has objected to Ex. PW1/6 and Ex. PW1/7 (colly) on the ground of mode of proof and PW1 Gulshan Parween (wife of deceased) has admitted in the cross examination that Aadhar Card of Mohd. Tufail (since deceased), copy of which is part of DAR and lying in judicial file Ex.PW1 /DX1 mentions the address of Mohd . Tufail as Sagarpur, PS Sakri, Sagarpur Madhubani, Bihar-847239 but she had claimed that the same was prepared prior to his marriage. The respondent no. 3-insurance company did not examine any witness to show that the Ex. PW1/6 and Ex. PW1/7 (colly) were forged and fabricated ones and were procured by the petitioners only to substantiate their claim for compensation. Even no such suggestion was put to PW 1 Smt. Gulshan Parween in her cross examination. Furthermore, the insurance company has not produced any evidence to establish that the deceased was a resident of Bihar at the time of accident. It is well settled that strict rules of evidence are not applicable in an MACT enquiry, which is not even a trial. Thus, it stands proved on record that Mohd. Tufail (since deceased) was residing and working in Delhi at the time of accident i.e. on 05.12. 2022."

7. I find no infirmity in the above finding of the learned Tribunal. As held by the Supreme Court in ***Sunita and Ors. v. Rajasthan State Road Transport Corporation and Anr.***, (2020)



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13 SCC 486, it must be remembered that the claimants are not to prove their case on the yardstick of proof beyond reasonable doubt, but only on the touchstone of preponderance of probability. The claimants have in the present case fulfilled the above test and proved that the deceased was a resident of Delhi at the time of the accident. The learned Tribunal has, therefore, rightly assessed the income of the deceased on the basis of the minimum wages for an unskilled worker, as notified by the Government of National Capital Territory of Delhi.

8. The challenge of the appellant is accordingly rejected.

Multiplier

9. The next challenge of the appellant to the Impugned Award is on the multiplier adopted by the learned Tribunal. The learned counsel for the appellant submits that the deceased, at the time of the accident, was admittedly aged about 35 years 11 months and 4 days. He submits that in terms of the judgment of the Supreme Court in *Sarla Verma & Ors. v. Delhi Transport Corporation and Anr.*, (2009) 6 SCC 121, therefore, a multiplier of 15 should have been adopted. He submits that the learned Tribunal has erred in applying the multiplier of 16.

10. I find no merit in the above contention of the learned counsel for the appellant.

11. The Supreme Court in its judgment of *Shashikala and Ors. v. Gangalakshamma and Anr.*, 2015 ACJ 1239 held that:

“17. Insofar as appropriate multiplier, the



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date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident, i.e., 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the Tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier of 14 which is the appropriate multiplier and the same is maintained. The total loss of dependency is calculated at Rs.16,82,310 (Rs.1,20,165 x 14)."

12. In **Navin Parcha & Ors. v. Deepak Kumar & Ors.**, Neutral Citation No-2019:DHC:4441, this Court has also held that where the deceased had not attained the age of 31 years, which is the next slab, the multiplier applicable to the previous slab would be applied.

13. In view of the above, the adoption of the multiplier of 16 by the learned Tribunal cannot be faulted. The challenge is accordingly rejected.

Rate of Interest

14. The last challenge of the appellant to the Impugned Award is on the rate of interest awarded by the learned Tribunal. As noted hereinabove, the learned Tribunal by the Impugned Award has awarded interest at the rate of 9% per annum from the date of filing of Detailed Accident Report (in short, 'DAR') on the compensation amount awarded in the favour of the claimants. The learned counsel for the appellant submits that the rate of interest on fixed deposits as notified by



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the Reserve Bank of India (in short, 'RBI') during the relevant time period was around 6.7% per annum.

15. The learned counsel for respondent nos.1 to 5, who appears on advance notice, submits that rate of interest awarded by the learned Tribunal is reasonable and should not be interfered with.

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

17. In ***National Insurance Co. Ltd. v. Yad Ram and Others***, 2023 SCC OnLine Del 1849, this Court has *inter alia* observed as under:-

“24. From a perusal of the aforesaid, it is evident that even though Section 171 gives a discretion to the learned Tribunal to grant interest on compensation, unlike Section 34 of the Code of Civil Procedure which prescribes that interest, except in commercial matters, would not exceed 6% p.a., neither any fixed rate of interest has been prescribed nor has any ceiling on the rate at which interest can be granted by the learned Tribunal under the MV Act has been provided. It is, therefore, always incumbent for the learned Tribunal to award interest at a rate which is deemed appropriate in the facts of each case; the rate must however be just and fair. The learned Tribunal has to keep in mind that interest is awarded not because of any contractual obligation but because of the delay in the claimants receiving the compensation which they should receive at the time of the accident itself. Since the time gap between the accident and the passing of an award may vary from case to case, Section 171 does not prescribe any fixed rate of interest and clothes the Tribunal with a discretion to award interest by taking into account factors like inflation, the rate of interest as prescribed by the Reserve Bank of India at the time of the accident as also the at the time of the passing of the award, the duration of the pendency of the claim petition, the



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nature of injuries, the nature of the urgency of the requirement of the claimants to receive compensation. The learned Tribunal may also take into account as to whether the claimants in order to meet the expenses for medical treatment of the injuries resulting from the accident were required to borrow from financial institutions. Another important factor would be as to what proportion of the awarded compensation pertains to damages already suffered such as medical charges, loss of earnings and out of pocket expenses vis-à-vis payments made towards loss of future earnings and loss of dependency, which in fact is being paid in advance. It cannot, therefore, be urged that because interest was granted at @12% p.a. by the Apex Court in respect of an award of a particular year, interest must necessarily be granted at the same rate in respect of all awards in the same year. Similarly, it cannot be said that because interest @ 6% p.a. was granted in an award pertaining to another year, the said rate must be followed in all awards of the same year. In every case, all surrounding circumstances have to be considered by the Court before awarding interest and infact even a slight change in the circumstances of two claim petitions in respect of two contemporaneous accidents in itself may be a ground to award interest at different rates in the two cases.”

18. Keeping in view the above dictum, as also the rate of interest notified by the RBI and the other surrounding circumstances of the present case, in my view, the Impugned Award is liable to be modified only to a limited extent that the appellant shall pay compensation along with interest at the rate of 7.5% per annum from the date of filing of the DAR, that is, 03.03.2023, till the date of deposit of the compensation amount along with the interest accrued with the learned Tribunal. The appellant shall deposit the said amount with the learned Tribunal within a period of four weeks from today. On such



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deposit, the same shall be released in favour of respondent nos.1 to 5 in terms of the schedule of disbursal prescribed in the Impugned Award.

19. The appellant shall stand exempted from depositing the statutory amount.

20. The appeal and the pending application are disposed of in the above terms.

21. There shall be no order as to costs.

NAVIN CHAWLA, J

NOVEMBER 28, 2023/rv

Click here to check corrigendum, if any