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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 24.05.2023

\+ MAC.APP. 211/2018
SUSHMA @ SUSHMAMEHRA & ORS ..... Appellant
Through: Mr. Mahesh Srivastava, Adv. with Mr. Vaibhav Manu Srivastava, Adv.

versus

IFFCO TOKIO GENERAL INSURANCE CO LTD & ORS ..... Respondent
Through: Mr. Brijesh Bagga, Adv. for R-1.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal under Section 173 of the Motor Vehicles Act preferred by the claimants seeks to assail the award dated 12.09.2017 passed by the learned Motor Accidents Claims Tribunal. Vide the impugned award, the appellants seek enhancement of compensation on the ground that though the accident took place on 18.07.2016, i.e., in the financial year 2016-17, the learned Tribunal has awarded compensation by taking into account the salary of the deceased for the earlier financial year, i.e., 2015-16.

2. Learned counsel for the claimant submits that before the learned Tribunal, the income tax returns of the deceased for the year 2016-17 as per which his monthly salary stood enhanced to Rs. 68,530/- w.e.f. 01.04.2016 could not be placed and therefore the tribunal had proceeded to award compensation on the basis of his salary for the year 2015-16. He submits

that in order to prove that the monthly salary of the deceased stood enhanced w.e.f., 01.04.2016 to Rs.68,530/-, the appellants have relied on 'Form 26 AS', which form was duly proved by the Tax Assistant in the Income Tax Department, Ward No. 71(2), Civic Centre, Minto Road, New Delhi who was examined as a witness in these proceedings on 08.03.2019. He submits that once the documents from the income tax authorities show that the monthly salary of the deceased w.e.f., 01.04.2016 stood enhanced to Rs.68,530/-, his gross annual income was required to be taken as Rs. 8,22,360/- and consequently, his yearly contribution to the family by including 30% enhancement towards future prospects and deducting 10% towards income tax as also 1/3rd amount towards his personal expenses, would work out to Rs. 6,41,441/- He, therefore, prays that the amount awarded by the learned Tribunal as compensation towards the pecuniary heads be enhanced to Rs. 83,38,733/-

3. *Per contra*, Mr. Brijesh Bagga, learned counsel for the respondent while defending the impugned award seeks to contend that on the basis of the evidence available before it, the learned Tribunal was justified in taking salary of the deceased as per his salary slips for the financial year 2015-16. He submits that the appellants having failed to lead any evidence before the learned Tribunal to show that the monthly salary of the deceased stood enhanced w.e.f. 01.04.2016, cannot now be permitted to urge that his salary should have been taken as Rs.68,530/-. Furthermore, the income tax returns for the financial year 2016-17, as per which it is claimed that the monthly salary of the deceased stood enhanced to Rs. 68,530/-, was filed only after the death of the deceased and therefore ought to be ignored. He, therefore, prays that the appeal be dismissed.

4. Having considered the submissions of the learned counsel for the parties and perused the record, I find that even though the respondent is justified in contending that it was only for the appellants to lead evidence before the learned Tribunal to prove that the monthly salary of the deceased on the date of the accident was Rs.68,530/-, the fact remains that this Court on 03.08.2018, after taking into account the appellant's explanation that they were not aware about the monthly salary of the deceased as existing on the date of accident, had permitted them to lead additional evidence to prove the income tax returns of the deceased for the financial year 2016-17. Consequently, the statements of both the Manager(H.R.) in PPAP Automotive Ltd., Noida, U.P. and the Tax Assistant from the Income Tax Department Ward No.71(2), Civic Centre, Minto Road Delhi were recorded before the Registrar on 08.03.2019. Even though these witnesses were duly cross-examined by the respondent, their assertion to the effect that the gross salary of the deceased on the date of the accident was Rs. 68,530/- remained unrebutted.

5. Once the two independent witnesses examined before the Court had clearly stated that the salary of the deceased at the time of his death was Rs. 68,530/-, there is no reason as to why this Court should disbelieve the appellant's stand and not grant compensation by taking this enhanced salary into account. Merely because the income tax returns of the deceased for the year 2016-17 was filed after his death, cannot be a ground to discard the said income tax returns especially when the deceased was not self-employed but was working with a limited company, the manager whereof had categorically stated that his monthly salary w.e.f. 01.04.2016 stood enhanced to Rs.68,530/-.

6. In the light of the aforesaid, I am inclined to accept the appellant's plea that the monthly income of the deceased w.e.f., 01.04.2016 stood enhanced to be Rs.68,530/-. After making the necessary deductions towards income tax and personal expenses of the deceased, the compensation awarded to the appellants towards loss of dependency as also towards loss of future prospects deserves to be suitably enhanced. At this stage, it also needs to be noted that in view of the order dated 16.05.2023 passed in MAC APP 1013/2017, the compensation awarded to the appellants under the non-pecuniary heads was reduced from Rs. 5,25,000/- to Rs. 70,000/-

7. For the aforesaid reasons, the appeal is allowed by modifying the impugned award and directing that the compensation payable to the appellants will as detailed herein below stand enhanced from Rs. 72,78,000/- to Rs. 84,08,733/-

S.No	***Heads***	***Compensation awarded by Tribunal***	***Compensation awarded by this Court***
1.	*Gross Income*	*Rs.6,35,662/-*	*Rs.68,530/- X 12 = Rs.8,22,360/-*
2.	*Annual Income by deducting income tax*	*Rs.6,35,662/- - Rs.36,272/- = Rs.5,99,390/-*	*Rs.8,22,360/- – Rs.82,236/- =7,40,124/-*
3.	*Addition to Income for Future Prospects*	*Rs.1,79,817/-*	*Rs.7,40,124/- X 30%= Rs.2,22,037/-*
4.	*Personal and living expenses*	*Rs.2,59,735/-*	*(Rs.7,40,124/- + Rs.2,22,037/-)/3 = Rs.3,20,720/-*
5.	*Yearly contribution to the dependants*	*Rs.67,53,136/-*	*(Rs.7,40,124/- + Rs.2,22,037/-) – Rs.3,20,720/- = Rs.6,41,441/-*
6.	*Compensation awarded*	*Rs.5,25,000/-*	*Rs.70,000/-*
7.	*Final Computation of the Compensation*	*Rs.72,78,136/-*	*(Rs.6,41,441 X 13) + Rs.70,000/- = Rs.84,08,733/-*

8. The aforesaid amount after adjusting the sum of Rs. 70,000/- already paid to the appellants towards non-pecuniary heads will be paid to the appellants along with interest @ 9% per annum, as already directed by the learned Tribunal under the impugned award.

9. The appeal stands disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

MAY 24, 2023
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