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

Date of decision: 11.09.2023

\+ **MAC.APP. 293/2017 & CM APPL. 9066/2020**

NATIONAL INSURANCE COMPANY

..... Appellant

Through: Ms.Archana Gaur, Adv.

versus

PARVESH & ORS

..... Respondents

Through: Mr.S.N. Parashar, Adv.

\+ **MAC.APP. 134/2018**

PARVESH AND ORS

..... Appellants

Through: Mr.S.N. Parashar, Adv

versus

BHEEM SINGH, NATIONAL INSURANCE CO LTD AND ORS

..... Respondents

Through: Ms.Archana Gaur, Adv. for NIC.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (*ORAL*)

1. These cross-appeals have been filed challenging the Award dated 04.02.2017 passed by the learned Motor Accidents Claims Tribunal (West-01), Delhi (hereinafter referred to as the

'Tribunal') in New MACT Case No. 477450/16 titled ***Parvesh & Ors. v. Sh. Bheem Singh & Ors.***.

2. The challenge of the Insurance Company (appellant in MAC.APP. 293/2017) and the claimants (appellant in MAC.APP. 134/2018) is to the quantum of the compensation awarded in favour of the claimants. While the Insurance Company is aggrieved of the compensation awarded by the learned Tribunal in favour of the Claimants by taking the minimum wages for a 'skilled person' as notified by the Government of NCT of Delhi, the claimants are aggrieved of the learned Tribunal not awarding the compensation on the basis of the evidence of monthly income produced before the learned Tribunal. The claimants also challenge the Impugned Award inasmuch as it does not take into account Future Prospects.

3. The learned counsel for the Insurance Company submits that as the deceased was a resident of State of Uttar Pradesh, the minimum wages as notified by the Government of Uttar Pradesh should have been taken into account for determining the compensation.

4. On the other hand, the learned counsel for the claimants submits that the learned Tribunal has failed to appreciate that the deceased was paying a monthly instalment of Rs.33,650/- to M/s. Tata Motors Finance Limited, for a period of almost two years prior to his death, for a loan taken to buy the truck, which was involved in the accident in question.

5. The learned counsel for the Insurance Company refutes the above submission of the claimants by stating that no cogent proof of income was produced by the claimants in form of any income tax returns filed by the claimants or his bank statement. The only proof of the above assertion was in form of the statement of PW-2- Mr.Johnson Andrews.

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

7. PW-2, Mr.Johnson Andrews, working as Assistant Manager (Legal), Tata Motor Finance Limited, was summoned by the claimants before the learned Tribunal. He stated that the deceased had taken a loan for his vehicle, that is, the truck bearing no. UP-13T-9355, on 31.10.2014. The loan amount of Rs.10,80,000/- which was to be repaid in 47 equal monthly instalments, with the first being of Rs.34,327/- and the remaining of Rs.33,650/- per month. The deceased had paid 20 EMIs from 02.12.2014 to 02.08.2016 'in cash' against the loan.

8. Though PW-2 could not state the source of the income of the borrower or the person who was making the repayment of the loan, in my view, the learned Tribunal should have relied upon the statement of PW-2 to assess the income of the deceased. The deceased was paying monthly instalment of Rs.33,650/-. His income would certainly have been more than that as he would have also spent on his own self and his family's day-to-day expenses. Merely because the claimants were unable to produce the income tax records or other cogent material in support of their assertion of the income of the

deceased, their claim should not have been reduced on this account. In ***Chandra alias Chanda alias Chandraram & Anr. v. Mukesh Kumar Yadav & Ors.***, (2022) 1 SCC 198, the Supreme Court has held that in absence of documentary evidence on record for the income of the deceased, some amount of guesswork is required to be done. Though the minimum wages notification can be a yardstick but, at the same time, it cannot be an absolute one to fix the income of the deceased. Merely because the claimants were unable to produce documentary evidence to show the monthly income of the deceased, same does not justify adoption of lowest tier of minimum wages while computing the income. I may quote from the judgment as under:-

> *"**9.** It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs 15,000 per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW 1 that her husband Shivpal was earning Rs 15,000 per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because the claimants were unable to produce*

> *documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs 15,000 per month.*
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> ***10.** In Minu Rout v. Satya Pradyumna Mohapatra this Court while dealing with the claim relating to an accident which occurred on 8-11-2004 has taken the salary of the driver of light motor vehicle at Rs 6000 per month. In this case the accident was on 27-2-2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs 8000 per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of one-third is to be made from the income of the deceased towards his personal expenses. Accordingly, the income of the deceased can be arrived at Rs 7467 per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs 14,33,664."*

9. In the present case, the learned Tribunal had before it the evidence in form of PW-2, who stated that the deceased had taken a loan on his vehicle and was paying instalment of Rs.33,650/- per month. In my view, therefore, the income of the deceased should have been assessed at Rs.33,650/- per month for determining the compensation payable to the appellants. As far as Future Prospects is concerned, in ***National Insurance***

Company Limited v. Pranay Sethi and Others, (2017) 16 SCC 680, the Supreme Court has directed as under:-

> *"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
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> *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

10. In the present case, the deceased was self-employed and was aged about 27 years on the date of the accident. In terms of the judgement of ***Pranay Sethi*** (Supra), therefore, the future prospects at the rate of 40% should have been added. It is ordered accordingly.

11. In view of the above, the compensation on account of Loss of Dependency is re-assessed and is accordingly enhanced as under:-

Loss of dependency:-

(33,650 x140/100) x 3/4 x 12 x 17= Rs.72,07,830/-

Loss of dependency awarded
by the Tribunal = Rs.16,82,694/-

Enhanced Amount = Rs.55,25,136/-

12. The above determined enhanced amount shall carry interest as awarded by the learned Tribunal in its Impugned Award.

13. By the order dated 22.03.2017 passed by this Court in MAC No. 293/2017, the operation of the Impugned Award had been directed to remain stayed subject to the Insurance Company depositing the entire awarded amount along with interest accrued thereon, with the learned Tribunal. As the compensation amount has now been enhanced, the Insurance Company shall deposit the balance/enhanced amount along with interest, with the learned Tribunal within a period of six weeks from today.

14. The compensation amount shall be released in favour of the claimants in terms of the schedule of disbursement prescribed by the Impugned Award.

15. The appeals and the pending application are disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 11, 2023/*rv/rp*