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

Date of decision: 31.10.2023

(68)+ MAC.APP. 774/2016 & CM APPL. 36389/2019

SHIV PRAKASH RATHI & ANR ..... Appellants
Through: Mr.Mayank Khurana and Mr.Akash Tomar, Advs.

versus

FAHIM AHMED & ORS (M/S IFFCO-TOKIO GENERAL INSURANCE CO LTD) ..... Respondents
Through: Mr.D. Satya Sai Sumanth and Mr.K.V. Girish Chowdhary, Advs. for R-3.

(69)+ MAC.APP. 312/2017

IFFCO TOKIO GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr.D. Satya Sai Sumanth and Mr.K.V. Girish Chowdhary, Advs.

versus

PRAKASH RATHI & ORS ..... Respondents
Through: Mr.Mayank Khurana and Mr.Akash Tomar, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed challenging the Award dated 09.06.2016 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accident Claims Tribunal (North West District), Rohini Courts, Delhi (hereinafter referred to as 'Tribunal') in MACT No. 204/2012 (New No. 49364/2016) titled ***Sh. Shiv Prakash Rathi & Anr. v. Sh. Fahim***

***Ahmed & Ors*.**

2. As the two appeals challenge the same Award, they are being disposed of by this common judgment.

3. The above claim petition was filed by the claimants stating that on 05.03.2012 at about 4:30 PM, the deceased Sh. Anand Rathi was driving his motorcycle, bearing registration no. MH-02-BX-0135. As he reached the Punjab Keshri Bus Stand, suddenly a truck bearing registration No. HR-55J-5298 (hereinafter referred to as the 'Offending Vehicle'), being driven in a rash and negligent manner came from Azadpur Mandi side, and suddenly turned towards the left side at a high speed due to which it hit the motorcycle of the deceased. The deceased got crushed under the front and rear wheels of the Offending Vehicle and unfortunately lost his life. The deceased was aged around 25 years at the time of the accident.

Income of the Deceased:

4. The challenge of the Insurance Company to the Impugned Award is that the learned Tribunal has erred in determining the income of the deceased based on Form-16 (Ex.PW-3/2) produced by PW-3- Sh. Ankit Mundhra, Branch Head, M/s Amjey Chemical Private Limited (hereinafter referred to as 'Company').

5. The learned counsel for the Insurance Company submits that the said Form-16 was filed with the Income Tax Authorities after the date of the accident. He submits that the learned Tribunal has held that PW-3 was not a reliable witness inasmuch as there were various contradictions in his statement and the documents produced by him. He submits that for the said reason, the learned Tribunal should also have refused to place reliance on

Form-16 which was produced by PW-3, the same having been manufactured only after the date of the accident.

6. On the other hand, the learned counsel for the claimants submits that the learned Tribunal has erred in determining the income of the deceased only on the basis of Form-16 produced by PW-3. He submits that PW-3 in his statement had stated that the deceased had joined the employment of the Company only on 01.09.2011. He submits that the offer letter shows that the annual salary of the deceased was Rs.6,36,000/-. Form-16 as produced relates only to the period 01.09.2011 to 31.03.2012 and not for the full Financial Year. He submits that, therefore, the amounts shown in Form-16 should have been extrapolated to the entire year for determination of the income of the deceased. He submits that the learned Tribunal has also erred in not relying upon the statement of PW3 and the documents produced by him in support of the assertion that the deceased was employed with the Company with effect from 01.09.2011 at an annual salary of Rs. 6,36,000/-. He submits that the compensation granted to the Claimants is, therefore, entitled to be increased.

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

8. It was the case of the claimants before the learned Tribunal that the Company had issued an Offer Letter dated 29.08.2011 to the deceased (Ex.PW-3/1), offering him the position of a General Manager, at a monthly salary of Rs.53,000/- and an annual salary of Rs.6,36,000/-. At the same time, an Employment Letter dated 17.08.2011 was also produced by the claimants from the same company as Ex.PW-1/10, which showed the

position offered to the deceased as Marketing Manager. The same shows the monthly salary of the deceased as Rs.53,000/-, while the annual salary, including annual bonus, to be Rs.6,36,000/- and Rs.6,89,000/-, respectively. There was a discrepancy in the position that had been offered to the deceased- one of General Manager, while the other as Marketing Manager.

9. Though, in my opinion, nothing much turns on this discrepancy in the position offered to the deceased, however, there are other material discrepancies in the documents and the statement of PW-3, which clearly cast a doubt on the statement of PW3 and the documents produced by him, and their authenticity, and give credence to the submission of the learned counsel for the Insurance Company that they could not have been relied upon by the learned Tribunal. These are enumerated herein below.

(i) PW-3 had also produced before the learned Tribunal purported cash vouchers {Ex.PW-3/3 (6 sheets)}, which show payments ranging between Rs.9,500/- per month to Rs.13,000/- per month, in cash, by the Company to the deceased. There is however, no proof of payment of the salary to the deceased. PW-3 in his statement further stated that the deceased had not been paid any amount except the amount as shown in the cash voucher referred to hereinabove;

(ii) The said witness also produced a purported ledger account, which again reflected that against the alleged salary Rs.53,000/- per month, the deceased was being paid only a sum of Rs.9,500/- to Rs.13,000/- per month by the said Company and that too, in cash. The said withdrawal was shown as being for personal use;

(iii) PW-3 further stated that the balance of the salary was kept by the deceased in the bank account of the Company itself. He states that the said account was not to carry any interest. This appears to be totally unbelievable as no employee will leave his salary with the employer and that too, without any liability of payment of interest;

(iv) He states that the balance salary due to the deceased was paid by the Company to the father of the deceased only after the accident and the death of the deceased. In fact, from the bank statement produced by the claimants before the learned Tribunal, it appears that the said payment of Rs.2,39,061/- was made only on 16.09.2013, that is, more than one year and nine months from the date of the accident;

(v) The claimants also relied upon a purported Power of Attorney dated 17.08.2011(Ex.PW-3/8), by which the deceased had been made one of the signatories to the bank account of the Company along with the Directors of Company. The learned counsel for the claimants explains that the said document pre-dates the date of the deceased joining the Company as per the Offer Letter and the Employment Letter referred to hereinabove, as at that time, the deceased was working in the Ahmadabad Office of the said Company. However, PW-3 in his statement states that before joining the Delhi Office, the deceased was working as a 'trainee' for 2 to 3 months. There is no explanation as to why the Company would make a 'trainee' its Authorised Signatory to operate the bank accounts even prior to his appointment.

10. From the above, it is apparent that the documents that had been produced on record by the claimants could not be relied upon as there were contradictions not only in the documents but also on the facts stated therein.

11. In the above background, the Form-16 produced by the Claimants also becomes suspicious and not worthy of any reliance. The same had been submitted by the Company post the accident and appears to have been filed only to generate proof of income of the deceased. The same should not have been relied upon by the learned Tribunal to determine the income of the deceased.

12. I am mindful of the principle that the Motor Accident Claims are to be tried on the touchstone of preponderance of probability and not to be proved beyond reasonable doubt as is required in Criminal Trials. Even applying the above principle, in my opinion, the claimants have failed to prove these documents and the contents thereof.

13. In ***Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.***, (2007) 5 SCC 428, the Supreme Court has observed as under:

> *"11. .... It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should*

> *not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-a-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable...... "*

14. At this stage, the learned counsel for the Claimants submits that the Claimants had also produced before the learned Tribunal the Income Tax Return (Ex.PW-1/8) of the deceased for the Assessment Year 2011-12 filed on 19.11.2011, that is, prior to the date of the accident. He submits that the said document has not been relied upon by the learned Tribunal only because the Claimants did not produce the official witness to prove the same. He submits that the said document, however, was proved by the testimony of PW-1, that is, Mr.Shiv Prakash Rathi, father of the deceased.

15. I find merit in the submission made.

16. While determining the just compensation payable under Section 166 of the Motor Vehicles Act, 1988, the learned Tribunal is not to hold a trial but to conduct an inquiry for determination of such compensation. The strict burden of proof would not be applicable to such an inquiry. The determination of the income can be made on the sole document of Income Tax Return, as has been held by the Supreme Court in ***Kalpanaraj v. T.N. State Transport Corpn.*** (2015) 2 SCC 764, observing as under:

> *"**8.** It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return."*

17. The Income Tax Return of the deceased shows the gross income to be Rs.2,64,890/-, on which the tax payable was Rs.504/- The annual income of the deceased should, therefore, be re-determined as Rs.2,64,386/-.

18. Based on the above, the compensation payable to the claimants towards loss of dependency is re-determined as under:-

Annual Income (minus tax)	=	Rs.2,64,386/-
(Add) 50% Future Prospect	=	Rs.1,32,193/- Rs.3,96,582/-
(Less) 50% towards personal expenses	=	Rs.1,98,291/-
Annual loss of dependency	=	Rs. 1,98,291/-
Multiplier	=	18
Loss of Dependency (1,98,291 x 18)	=	**Rs.35,69,238/-**

Award of compensation on the conventional heads:

19. The learned counsels for the parties further challenge the compensation that has been awarded in favour of the claimants towards loss of affection, funeral expenses and loss of estate.

20. The learned counsels for both the parties submit that the compensation awarded is not in terms of the judgment of the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and Others***, (2017) 16 SCC 680.

21. In ***Pranay Sethi*** (Supra), the Supreme Court has held that compensation awarded on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/-, respectively.

22. As far as loss of consortium is concerned, keeping in view the judgment of the Supreme Court in ***United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur & Ors.*** (2021) 11 SCC 780, the same has to be awarded to each of the claimants.

23. In the present case, as the claimants are the parents of the deceased, and they both have suffered loss of consortium of the deceased, they shall be entitled to Rs. 40,000/- each towards loss of consortium.

24. Accordingly, the compensation awarded towards conventional heads is re-determined as under:

S.No.	Particulars	Amount
1	Loss of estate	Rs.15,000/-
2	Loss of consortium	Rs.80,000/-
3	Funeral expenses	Rs.15,000/-
	Total	**Rs.1,10,000/-**

CONCLUSION AND DIRECTIONS:

25. The Impugned Award shall stand modified to the above extent.

26. The Insurance Company has already deposited the awarded amount as awarded by the learned Tribunal with the learned Tribunal. By an order dated 22.03.2017 passed in MAC.APP. 774/2016, a part amount was directed to be released in favour of the Claimants. Out of the remaining amount, the excess amount deposited by the Insurance Company shall be released in favour of the Insurance Company along with proportionate interest accrued thereon. The balance amount as re-determined by this Court, shall continue to be disbursed to the Claimants in terms of the schedule of the disbursal as stipulated in the impugned Award.

27. The statutory amount deposited by the Insurance Company shall be released in favour of the Insurance Company along with interest accrued thereon.

28. The appeals along with the pending application are disposed of in the above terms.

29. There shall be no order as to costs.

NAVIN CHAWLA, J

OCTOBER 31, 2023/ns/RP