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

Date of Decision: 25.08.2023

\+ MAC.APP. 836/2018

CHOLAMANDALAM MS GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr.Pankaj Gupta, Ms.Suman Bagga, Advs.

versus

RAM BAHADUR SINGH & ORS ..... Respondents

Through: Mr.Ankit Rai, Mr.Juned Ansari, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 5266/2019

1. This application already stands withdrawn vide order dated 13.09.2019. The same shall not be shown in the cause list any further.

CM APPL. 37991/2018

2. This is an application seeking condonation of 26 days delay in filing the appeal.

3. For the reasons stated in the application, the delay is condoned. The application is allowed.

MAC.APP. 836/2018 & CM APPL. 37989/2018

4. This appeal has been filed challenging the Award dated 21.05.2018 passed by the learned Motor Accident Claims Tribunal (North-West) District, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MAC Petition no.240/2017 titled ***Ram Bahadur Singh & Ors. v. Sh.Pappu & Ors.***.

5. The limited challenge of the appellant to the Impugned Award is on the determination of the compensation under the head of the 'loss of dependency' in favour of the claimants/respondent nos.1 to 3 herein.

6. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding the loss of dependency in favour of the claimants by taking the salary of the deceased Sh. Krishan Kant at Rs.35,000/- per month. He submits that there was no reliable evidence placed on record by the claimants in support of their claim of the salary of the deceased.

7. He draws my attention to the documents, that is, the appointment letter dated 25.09.2015, and a Certificate dated 31.08.2016 (Ex.PW1/3) (colly 3), to submit that these documents, on the face, appear to be fabricated for the purposes of the claim petition. He submits that though the claimants examined Sh.S.P.Sharma (PW-2), who claimed himself to be the partner in M/s Amba Glass, where the deceased was purportedly working, the said witness also produced only an alleged Salary Certificate as a proof of the salary paid to the deceased; there was no proof of payment of the salary produced by the claimants; the claimants had also not filed the income tax returns or the bank account statement showing the credit of the salary in the account of the deceased. He submits that

therefore, there was no evidence on record on the basis of which the learned Tribunal could have assessed the income of the deceased at Rs.35,000/- per month.

8. On the other hand, the learned counsel for the respondent no.2 submits that the claimants had produced before the learned Tribunal, the certificate showing the salary of the deceased as also the appointment letter of the deceased, issued by his employer- M/s Amba Glass. Mr.S.P.Sharma (PW-2), the partner in M/s Amba Glass, had also appeared as a witness before the learned Tribunal, and affirmed that the deceased was drawing a salary of Rs.45,000/- per month inclusive of conveyance charges at Rs.10,000/- per month. He submits that barring putting to the witness that the said documents were fabricated, the appellant herein was not able to challenge the documents produced by the claimants in support of their claim of the salary of the deceased.

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

10. Though it cannot be disputed that the initial onus of proof of income of the deceased would lie on the claimants, in the present case, in my opinion, the claimants were able to discharge the said onus of proof by producing before the learned Tribunal not only the documents in form of the appointment letter and the certificate of salary but also in form of PW-2 who claimed himself to be the partner of M/s Amba Glass, that is the employer of the deceased. In the cross-examination, barring putting the suggestion to the witness that the document produced is fabricated, no other confrontation to

the witness was made by the appellant.

11. It may be true that the claimants should have ideally produced further evidence in form of the Bank Account Statement of the deceased, his income tax certificates, among other documents, to further prove the income of the deceased, however, in the absence of a real challenge by the appellant to the salary of the claimant, the learned Tribunal cannot be said to have erred in accepting the version of the claimants on the issue of the salary of the deceased. Each case has to be determined on its own facts. In the present case, in my opinion, given the nature of the evidence led by the parties before the learned Tribunal, the claimants were able to discharge the onus of proof of the income of the deceased.

12. The next challenge of the appellant to the Impugned Award is that even assuming that the deceased was drawing a salary of Rs.35,000/- per month, the learned Tribunal has erred in not deducting the income tax payable on such amount to determine the loss of dependency. In support, he places reliance on the judgment of ***National Insurance Company Limited v. Pranay Sethi & Ors***. (2017) 16 SCC 680.

13. I find merit in the said contention.

14. In ***Pranay Sethi*** (supra), the Supreme Court has held as under:

> *"44. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be added to the sum on the percentage basis and "income" means actual income less than the tax paid. The multiplier has already been fixed in Sarla Verma*

> *which has been approved in Reshma Kumari with which we concur."*
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> (Emphasis supplied)

15. In view of the above, the appeal partially succeeds. For determining the amount of compensation that would be payable in terms of the present order, the parties shall appear before the learned Tribunal on 25th September, 2023.
16. The learned counsel for the appellant submits that the entire compensation amount as awarded by the learned Tribunal along with interest accrued thereon has been deposited with the learned Registrar General of this Court pursuant to the order dated 10.10.2018.
17. The learned Tribunal shall re-determine the amount of compensation payable to the claimants and shall send a report of such re-determination to the learned Registrar General of this Court. The said exercise be completed within a period of eight weeks of the parties appearing before the learned Tribunal.
18. On receiving the report from the learned Tribunal, the learned Registrar General shall release the compensation, so re-determined, to the claimants in accordance with the schedule of disbursal stipulated by the learned Tribunal in the Impugned Award. The excess amount deposited by the appellant shall be returned to the appellant along with proportionate interest accrued thereon. The statutory amount deposited by the appellant be released to the appellant along with interest accrued thereon.
19. The appeal is disposed of in the above terms.

20. The statutory amount deposited by the appellant shall be released to the appellant along with interest accrued thereon

NAVIN CHAWLA, J

AUGUST 25, 2023
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