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

Date of decision: 01.09.2023

+ **MAC.APP. 83/2017**

USHA & ORS

..... Appellants

Through: Mr.Anuj Arora, Adv.

versus

AKBAR & ORS (UNITED INDIA INSURANCE CO LTD)

..... Respondents

Through: Mr.Ravi Sabharwal, Adv for R-3

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellants challenging the Award dated 26.09.2016 passed by the learned Motor Accidents Claims Tribunal, North-East District, Karkardooma Courts, Delhi (hereinafter referred to as the learned 'Tribunal') in MACT No. 52/2014 and MACT New No. 15208/2015 titled ***Smt. Usha & Ors. v. Akbar & Ors..***

2. The limited challenge of the appellants, who were the claimants before the learned Tribunal, are as under:-

a) That the learned Tribunal has erred in adopting the multiplier dependent on the age of the mother of the deceased, rather than on the age of the deceased. The learned counsel for the appellants submits that the multiplier has to be based on the age of the deceased. He submits that, in the present case, the deceased was aged



around 28 years on the date of the accident, and, therefore, the multiplier to be adopted should have been 17 instead of 13, which has been adopted by the learned Tribunal;

b) That the learned Tribunal has erred in assessing the income of the deceased at only Rs.23,992/- per month. Drawing reference to the pay-slips issued by SMCC Construction India Limited, where the deceased was working at the time of the accident, for the months of January 2014 and February 2014, he submits that while for January 2014, the deceased earned a gross income of Rs.85,442/- per month; in the month of February 2014, his gross pay was Rs.59,797/-. The learned counsel for the appellants also draws my attention to Form No. 16 (TDS certificate) of the deceased, to submit that the said certificate shows the income of the deceased as Rs.9,28,967/- per annum, on which TDS has been deducted and deposited by the employer. He submits that, therefore, the income of the deceased should have been taken at a minimum of Rs.10,00,000/- per annum.

3. On the other hand, the learned counsel for the respondent no.3, while not disputing that the learned Tribunal has erred in taking the multiplier based on the age of the mother of the deceased, and admitting that the correct multiplier of 17 should have been adopted as per the age of the deceased, disputes the submission of the learned counsel for the appellants on the



income of the deceased to be taken into account. He submits that the salary slip for the month of February 2014 of the deceased clearly shows his Basic Salary as only Rs.14,100/-, with certain other allowances added to it to make the Gross Pay. He submits that allowances like Conveyance Allowance, Medical Reimbursement, LTA, etc., are not to be added to the income of the deceased, as these allowances are personal in nature to the deceased.

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

5. On the first aspect of the multiplier to be adopted, there cannot be a dispute that the learned Tribunal has erred in adopting the multiplier based on the age of the mother of the deceased while awarding compensation. In view of the judgment of the Supreme Court in *Sarla Verma (Smt) and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121, it was the age of the deceased which should have been taken into consideration for determining the relevant multiplier. The deceased was aged around 28 years on the date of the accident, therefore, the correct multiplier to be adopted should have been 17. The Impugned Award shall stand modified accordingly.

6. On the issue of the income of the deceased, as the date of the accident is 16.03.2014, the relevant salary slip, therefore, to be taken into consideration would be the one immediately prior

to the date of the accident, that is, February 2014. The same is



SMCC CONSTRUCTION INDIA LIMITED
23, Local Shopping Centre, Nadangir, New Delhi - 110062

(14)

Pay Slip Month: Feb-2014

Date of Joining: 04-Aug-08

Employee Code	M03372	PAN Number	AKBPG9327M
Employee Name	Ankur Doss	SS A/C Number	0482430008489
Designation	ARM - Safety	P F Number	DL100887401
E-mail	ankur13goid@yahoo.co.in	Employee Grade	084

Earnings' Description	Amount	Deductions' Description	Amount
Basic Salary	14,100	PF	2,037
Dearness Allowance	2,342	ESI	
House Rent Allowance	7,030	Income Tax	9,000
Conveyance Allowance	2,826	Lunch Deduction	
Medical Reimbursement	2,820	Other Deductions	
LTA	1,410	Professional Tax	
Other Allowance	1,148		
Trip Allowance	4,000		
Price Index Allowance	5,362		
Special Allowance	6,020		
Professionals / Hardship Allowance			
Site Allowance	9,000		
RCA			
FMA			
Overtime	3,526		
Leave Encashment			
Food Allowance			
Interest Subsidy			
Annual Bonus			
GROSS PAY	89,787	GROSS DEDUCTION	11,037

Net Pay Rs 48,754

This is a computer generated pay slip and does not require any signatures.

Contents of this statement will be considered correct if no error is reported within 30 days of receipt of statement.

(Signature) (Stamp)

7. From the salary slip of the deceased, as reproduced hereinabove, it is evident that in addition to basic salary, the deceased was also drawing Dearness Allowance, House Rent Allowance, Conveyance Allowance, Medical Reimbursement and Price Index Allowance, etc. These allowances should have been added to determine the income of the deceased. I draw

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in *Sunil Sharma and Others v. Bachitar Singh and Others*, (2011) 11 SCC 425, wherein the Supreme Court has held as under:-

“(a) Computation of income

6. *In National Insurance Co. Ltd. v. Indira Srivastava S.B. Sinha, J. has observed that: (SCC p. 767, para 9)*

“9. The term ‘income’ has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.”

7. *His Lordship also stated that if some facilities were being provided whereby the entire family stood to benefit, the same must be held to be relevant for the purpose of computation of total income on the basis of which the amount of compensation payable for the death of the kith and kin of the applicants was required to be determined. This Court held that: (Indira Srivastava case, SCC p. 768, para 12)*

“12. ... superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family.”

8. *This Court clarified that by opining that: (Indira Srivastava case, SCC p. 771, para 17)*

“ ‘just compensation’ must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay-packet is what the dependants have lost [in view of] death of the



deceased. It is in the nature of compensation for future loss towards the family income.”

and that: (Indira Srivastava case , SCC p. 772, para 19)

“19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.”

9. In Raghuvir Singh Matolya v. Hari Singh Malviya this Court has observed that dearness allowance and house rent allowance should be included for computation of income of the deceased.

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11. Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA, and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased.”

8. In view of the above judgment, the Dearness Allowance, House Rent Allowance, Conveyance Allowance, Medical Reimbursement, and Price Index Allowance are to be added to the Basic Salary of the deceased to determine his monthly income. On the other hand, allowances that were personal to the deceased and would not survive his death and were dependent

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on factors other than his salary, meaning thereby, were not



constant, that is LTA, Other Allowances, Title Allowance, Special Allowances, Site Allowance, Overtime, and Leave Encashment, are not to be considered as part of the income of the deceased.

9. The reliance of the learned counsel for the appellants on Form No. 16 cannot be accepted as a conclusive proof for the determination of income of the deceased. The TDS is deducted on the amount paid by the employer, which would also include the amounts paid for reimbursement of actual expenses, or other allowances which could be personal to the deceased, and which would not survive on his death. In my view, therefore, the document which is to be relied upon, in the facts of the present case, for determining the income of the deceased has to be the Salary Slip, as it gives the complete breakup of the amount paid to the deceased under various heads.

10. In view of the above, the income of the deceased is determined as:-

February 2014 Salary

Earning Description	Amount
Basic Salary	Rs.14,100/-
DA	Rs.2,842/-
HRA	Rs.7,050/-
Conveyance Allowance	Rs.2,820/-
Medical Reimbursement	Rs.2,820/-
Price Index Allowance	Rs.5,082/-
Total	Rs.34,714/-



11. Accordingly, the Award shall stand modified to the above extent.

12. In view of the above determination, the compensation payable to the appellants for the death of the deceased in the motor accident, is recalculated as under:-

$$\begin{aligned}
 &\text{Rs.34,714/-} \times 12 \text{ (annual)} \times 17 \text{ (Multiplier)} \\
 &\qquad\qquad\qquad = \text{Rs.70,81,656/-} \\
 &\text{Rs.70,81,656/-} + \text{Rs.35,40,828/-} \text{ (50\% Future prospects)} \\
 &\qquad\qquad\qquad = \text{Rs.1,06,22,484/-} \\
 &\text{Rs.1,06,22,484/-} \text{ (-) Rs.53,11,242/-} \text{ (1/2 for Personal Expenses)} \\
 &\qquad\qquad\qquad = \text{Rs.53,11,242/-}
 \end{aligned}$$

13. On the above amount, appropriate income tax leviable shall have to be deducted. I may note that the learned counsel for the appellants, on instructions, submits that for the relevant period, keeping in view the income determined for the deceased, income tax shall not be payable. However, this may require a deeper examination. Accordingly, I deem it appropriate to remand the matter back to the learned Tribunal to re-determine the compensation payable to the appellant in the above terms.

14. Besides the above, the appellants are also entitled to compensation under the following heads:-

Love and affection	Rs.1,00,000/-
Loss of Estate	Rs.10,000/-
Funeral expenses	<u>Rs.25,000/-</u>
Total	<u>Rs.1,35,000/-</u>



15. The learned Tribunal shall re-determine the compensation payable to the claimants/appellants in terms of its Impugned Award, as modified by the present judgment. The enhanced amount shall also carry interest at the rate of 9% per annum from the date of filing of the Claim Petition, that is, 15.04.2014, till the date of its deposit by the respondent no.3 with the learned Tribunal. The amount already deposited by the respondent no. 3 shall be taken into account.

16. For the re-determination of the compensation, the parties, that is, the appellants and the respondent no.3, shall appear before the learned Tribunal on 26th September, 2023.

17. The enhanced amount shall be deposited by the respondent no.3 with the learned Tribunal within a period of six weeks of such re-determination. The same shall be released in favour of the appellants, including the arrears of the enhanced amount, in accordance with the schedule of disbursal stipulated by the learned Tribunal in the Impugned Award.

18. The appeal is disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 1, 2023/rv/am