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

\+ MAC.APP. 65/2023

THE NEW INDIA ASSURANCE COMPANY LTD .....Appellant

Through: Ms. Bhairavi S N, Advocate through VC.

versus

SMT SHAKUNTALA AND ORS .....Respondents

Through: Mr. Puneet Verma, Proxy Counsel for Mr. Mukesh Sharma, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% **13.11.2024**

1. The present Appeal under *Section 173 of the Motor Vehicles Act, 1988* has been filed on behalf of the Appellant against the Award dated 26.09.2022 *vide* which the compensation of Rs. 61,69,368.08/- along with interest has been granted to the Claimants-Respondents.

2. The sole ground on which the Award dated 26.09.2022 has been challenged is that the income of the deceased-Shri Arun has been taken as Rs. 16,981.66/- per month on the basis of Income Tax Return (ITR) filed on 31.07.2013 without appreciating the testimony of PW1-Smt. Shakuntala, mother of deceased-Shri Arun, who though claimed that her son was earning Rs. 17,000/- per month but she was unable to explain the nature of his job or give any cogent explanation.

3. **Submissions heard.**

4. The deceased-Shri Arun while walking on the pavement/footpath of the Road No. 43 going from Mangolpuri to Rani Bagh, Delhi on 04.01.2014,

was hit by the offending Truck bearing Registration No. HR 38 J 6579 which was being driven by Birender Yadav in a rash and negligent manner. Consequently, the crush injuries were suffered by deceased-Shri Arun. An FIR No. 10/2014 under Sections 279/304A/429 of the Indian Penal Code, 1860 had been registered at Police Station Rani Bagh, Delhi.

5. There are five Claimants-Respondent Nos. 1 to 5 of deceased-Shri Arun, who are Smt. Shakuntala (mother), Shri Ram Dulare (father), Smt. Savita Kumari (sister), Smt. Renu (sister) and Smt. Rama Rani (sister) respectively who filed the Claim Petition bearing No. 50584/2016 under *Section 166 of the Motor Vehicles Act, 1988* for claiming the compensation.

6. The learned Tribunal *vide* Award dated 26.09.2022 granted a compensation of Rs. 61,69,368.08/- along with interest @ 7% per annum.

7. Submissions heard.

8. The only grievance of the Appellant-Insurance Company is that the monthly income of deceased-Shri Arun has been assessed as Rs. 16,981.66/- on the basis of one solitary aforesaid ITR which has not been substantiated by the testimony of PW1-Smt. Shakuntala, the mother of deceased-Shri Arun, as she has no proof of the income of her son. Therefore, the same should have been calculated as per the minimum wages.

9. It is pertinent to observe that the ITR for the Year 2013-14, Ex.PW2/1 of deceased-Shri Arun was proved by PW2-Shri Anuranjan Kumar, Tax Assistant, Civic Centre, Ward No. 41(4), Minto Road, New Delhi, the income under the Head 'Business' reflected Rs. 72,000/- per annum, whereas, the income under the head 'From Other Sources' was reflected as Rs. 1,32,200/-. The total income was reflected as Rs. 2,04,200/- and after deduction of tax in the sum of Rs. 420/-, the net income was reflected as Rs.

2,03,780/- per annum or Rs. 16,981.66/- per month.

10. PW1-Smt. Shakuntala, mother of deceased-Shri Arun, also deposed that the income of her son was Rs. 17,000/- per month. Therefore, the learned Tribunal has rightly taken the income of deceased-Shri Arun as Rs. 16,981.66/- per month which cannot be faulted.

11. In view of above, there is no infirmity in the Award dated 26.09.2022 and the Appeal is hereby dismissed.

NEENA BANSAL KRISHNA, J

NOVEMBER 13, 2024
S.Sharma