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

% **Date of decision: 27th February, 2024**

\+ MAC.APP. 127/2024, CM APPL. 11758/2024

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

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

versus

KRISHAN CHANDER AND OTHERS ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 11759/2024 (exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

CM APPL. 11760/2024 (delay in filing)

3. This is an application filed by the applicant/appellant seeking condonation of 56 days delay in filing the present appeal. However, the statutory amount of Rs.25,000/- for filing the appeal has not been deposited.

4. The delay of 56 days in filing the appeal is condoned, subject to the appellant/Insurance Company filing a statutory amount of Rs.25,000/- with the Registry of this Court within one month from today.

5. The application stands disposed of.

MAC.APP. 127/2024

6. By way of the present appeal preferred under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'), the appellant/Insurance Company is assailing the impugned judgment-cum-award dated 26.09.2023 passed by the learned Presiding Officer, MACT-01, South-West District, Dwarka Courts, New Delhi in MACT No.2296/2016 titled as 'Krishna Chandra v. Neeraj Kumar & Ors.'.

7. Learned counsel appearing for the appellant/Insurance Company fairly conceded at the Bar that the appellant/Insurance Company is challenging the quantum of compensation awarded by the learned Tribunal to the extent that although the deceased was 21 years of age and was pursuing a course in Bachelor of Dental Surgery (BDS), the learned Tribunal erroneously assessed the monthly income of the deceased to be Rs.25,000/- per month without any basis or evidence and added 40% towards loss of future prospects and deducted ½ towards personal and living expenses and has awarded an exorbitant amount of compensation of Rs.37,80,000/- to the claimants/parents of the deceased.

8. Having heard the learned counsel for the appellant/Insurance Company and on perusal of the record, evidently, as per the Secondary School Examination record of the deceased/Kuldeep Kumar (Ex. PW-1/4), his date of birth was 08.08.1995 and therefore, as the accident occurred on 30.09.2016, the age of the deceased was rightly reckoned to be 21 years at the time of his death. As regards the income and profession of the deceased, it would be relevant to reproduce the reasons that prevailed in the mind of the learned Tribunal, which read

as under:

*“11. **INCOME AND PROFESSION***

In the instant case, PW01-Krishan Chandra deposed that at the time of accident, his deceased son was student of Pandit Bhagwat Dayal Sharma, University of Health Sciences, Rohtak and was doing the course of Bachelor of Dental Surgery (BDS) vide Regn No. 13-PDM-99 and was in fourth years of his BDS course. Furthermore, PW03-Dr. Mandeep Singh Virdi, Dean and Principal PDM Dental College and Research Institute, Bahadurgarh, Haryana also deposed that he was DEAN of the Dental College in which deceased-Kuldeep Kumar was studying.

In 2016, the deceased was in fourth year of BDS Course. He had brought that day copy of his I-Card Ex. PW3/l, copies of his statements of. Marks for first year, second year and third year which were Ex. PW3/2 (colly), copy of bonafide certificate regarding his being student Ex. PW3/3, copies of fee receipts for first year, second year, third year and fourth year dated 17.08.2013, 28.06.2014, 06.07.2016 and 04.07.2016 were respectively EX. PW3/4. The student was above average as he assessed on the basis of marks obtained by him in first year, second year and third year. In Dental Colleges MNC were not coming for seeking/giving placement.

It is relevant to pen down here that nothing came to record which sake the credibility of PW03-Dr. Mandeep Singh Virdi on this spect.

It is worthwhile to mention here that the Hon'ble Supreme Court in its recent judgement in Chandra @ Chanda @ Chandraram Vs Mukesh Kumar Yadav & Ors (Civil Appeal No. 6152/2021) held as below:

> *“10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving license and was earning Rs.15000/-per month. Possessing such license 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 AW1 that her husband Shivpal was earning Rs.l5000/-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 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.l5000/per month. In the case ofMinu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors. this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/-per month. In this case the accident was on 27.02.2016 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."

In light of above and keeping in view of fact and circumstances of the case, the Tribunal considers the notional income of the deceased-Sh. Kuldeep Kumar as Rs. ***25,000/-*** *per* ***month.***

Further, in terms of the principles laid down in ***National Insurance Company Ltd., vs. Pranay Sethi***[1] *the deceased would also have future prospects @ 40% as he was 21 years of age at the time of accident."*

9. On a careful perusal of the aforesaid observation, this Court is unable to find any illegality, perversity or incorrect approach adopted by the learned Tribunal. The deceased was pursuing his education and his notional income should be assumed to be something more than what is provided as the minimum wages for a skilled workman. Needless to say, the deceased in all probability, was going to have a

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[1] 2017 (16) SCC 680

promising career, which was cut short due to the accident. As a matter of fact, learned Tribunal has been very conservative in its approach in assuming the notional income of the deceased @ Rs.25,000/-. Reference in this regard can be made to the decisions in **Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma**[2] and **S. Vasanthi v. M/s. Adhiparasakthi Engg. College**[3]

10. The learned Tribunal rightly deducted ½ towards personal use and financial consumption of the deceased since the claimant/father has been gainfully employed and it rightly applied the future prospects @ 40% besides applying the multiplier of '18' and the total loss of financial dependency assessed to the tune of Rs.37,80,000/- is without any blemish. As regards the compensation amount towards loss of estate, funeral expenses and loss of consortium is concerned, the same have been assessed in terms of the parameters laid down in the case of ***Pranay Sethi (supra).*** Thus, the total amount of compensation is arrived as under:

S.No.	Head	Amount
1	Loss of dependency	Rs.37,80,000/-
2	Funeral expenses	Rs.15,000/-
3	Loss of estate	Rs.15,000/
4	Loss of consortium	Rs.40,000/
	TOTAL	**Rs.38,50,000/-**

11. No other ground for challenge has been advanced nor reflected

[2] (2015) 2 SCC 180
[3] 2022 INSC 1062

from the instant appeal. Accordingly, the present appeal is dismissed *in limine.*

12. The appellant/Insurance Company is directed to deposit the entire amount of compensation with accrued interest thereon, with the learned Tribunal within two weeks from today failing which, the appellant/Insurance Company shall be liable to pay future interest @ 15% p.a. from the date of this judgment till realization. Since the appeal has been filed without complying with the pre-condition for a deposit of Rs.25,000/-, the same be deposited within one month from today with the Registrar General of this Court, which shall be paid to the respondents/parents of the deceased. In case of any failure by the appellant/Insurance Company to deposit the said amount, the appellant/Insurance Company shall be liable to pay interest @ 15% p.a. from the date of default till realization.

13. This order is passed without prejudice to the rights and contentions of the claimant.

14. The pending application also stands disposed of.

15. Copy of this order be sent to the learned Tribunal for information and necessary compliance.

DHARMESH SHARMA, J

FEBRUARY 27, 2024/ck