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

+ MAC.APP. 316/2023

DEJI DEVI AND ORS.

.....Appellants

Through: Mr. Manish Maini, Ms. Divya Saini
& Mr.R.K. Singh, Advocates

Versus

M/S LIBERTY VIDEOCON GENERAL INSURANCE COMPANY
LIMITED AND ORS.

.....Respondents

Through: Mr. A.K.Soni, Advocate for
respondent No.1

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **16.12.2024**

1. The present appeal under *Section 173* of the *Motor Vehicles Act, 1988* has been filed by the Appellants against the judgment dated 08.12.2022 passed by the learned Motor Accident Claims Tribunal, seeking enhancement of the compensation granted in the sum of Rs.40,77,000/- along with interest @7.5% per annum on account of demise of Bahu Singh @ Babloo Singh in a road accident which occurred on 04.04.2017.
2. ***Briefly stated***, on 04.04.2017 at about 11:00 PM, near Kambaliyas, District Bhilwara, Rajasthan, the deceased Sh. Babu Singh @ Sh.Babalu Kumar Singh (deceased) was checking rope and tarpal of the Truck after parking the same on the extreme left side of the road, with parking lights and indicators on, when the offending motor cycle bearing registration No. GJ-06KG-7625, driven by respondent No.2- Sh. Parth J. Yadav in a rash and negligent manner, hit him from behind, as a result of which he fell down and suffered fatal injuries.
3. FIR No. 122/2017, under Sections 279/304A IPC was registered at



Police Station Gulabpura, District Bhilwara, Rajasthan. On completion of investigation, Charge Sheet under Section 166 of the *Motor Vehicles Act* was filed against respondent No.2. The claim petition was filed before the learned Tribunal by the wife, three minor children and parents of the deceased.

4. The learned Tribunal after considering the evidence, granted compensation in the sum of Rs.40,77,000/- along with interest 7.5% per annum to the claimants.

5. Aggrieved by the compensation awarded, the present Appeal has been filed by the claimants on the ground that the deceased was the Driver of a Truck and his salary was proved @Rs.25,000/- per month not only from the testimony of the appellant (PW-1) but also Sh. Amrinder Singh (PW-3), Employer of the deceased. However, the learned Tribunal has erred in not taking the salary of the deceased as Rs.20,000/- per month. Thus, enhancement of the compensation is sought by the Appellants.

6. Learned counsel for the Respondent/Insurance Company countered the arguments and stated that the income of the deceased has been rightly assessed by the learned Tribunal and the impugned Award does not call for any interference.

7. Submissions heard and record perused.

8. The only challenge raised by the Appellants is in regard to the income of the deceased.

9. Smt. Deji Devi, PW-1, wife of the deceased, in her testimony before the learned Tribunal, stated that her husband was doing Private Service and was working as a Driver with M/S Deep Freight Carriers and



was earning Rs.25,000/- per month. His salary receipt has been exhibited as Ex. PW1/3. The only suggestion put by the Insurance Company during cross-examination of PW-1 was that the deceased was not in the employment or was not getting income of Rs.25,000/- as deposed by PW-1.

10. PW-3 Sh. Amrinder Singh, owner of M/S Deep Freight Carriers, deposed that the deceased was working with him since the year 2012. He was earlier driving other vehicles, but since he purchased the TATA Truck in the year 2016, he was driving the Truck. He further deposed that the deceased used to ply the Truck from Delhi to Mumbai and he used to pay him Rs.4,000/- to Rs.6,000/- per trip. In that way, the deceased was earning around Rs.20,000/- per month on annual basis. This witness also produced the original Notebook Ex. PW3/A from the year 2016 (i.e. when he purchased the Truck) till 27.02.2019.

11. On perusal of the testimony of the appellant and the witnesses examined by her, it emerges that though the Salary Certificate Ex. PW1/3 mentions that the deceased was getting salary of Rs.25,000/- per month but from the testimony of PW-3, it is evident that the deceased was paid for every trip he made. PW-3 has further explained that the deceased was getting average payment of Rs.20,000/- per month. ***The learned Tribunal has thus, rightly assessed income of the deceased as Rs.20,000/- per month.***

12. There is no merit in the Appeal and the same is accordingly dismissed.

NEENA BANSAL KRISHNA, J

DECEMBER 16, 2024/r