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

\+ MAC.APP. 189/2020

UNITED INDIA INSURANCE CO. LTD. .....Appellant
Through: Mr. Pradeep Gaur, Advocate.

versus

POONAM & ORS. .....Respondents
Through: Mr. Avtar Singh and Mr. Arjun Dhamija, Advocates for R-1 to 4.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% **22.10.2024**

CM APPL. 23255/2020 (Delay of 253 days in filing the Appeal)

1. The Application has been filed for condonation of delay of 253 days in filing the Appeal.

2. It submitted that the note for filing of the Appeal has to be approved at different levels which took some time resulting into the delay of 253 days.

3. For the reasons stated in the Application, delay is condoned.

4. Application is hereby disposed of.

MAC.APP. 189/2020 & CM APPL. 23253/2020 (Stay)

5. Appeal under Section 173 of the *Motor Vehicle Act, 1988* has been filed against the final Award dated 13.09.2019 *by the Insurance Company.*

6. The sole grievance against the Award is that the deceased was

survived by his wife, child and the parents. The learned Tribunal in Paragraph 20 of the impugned Award noted that father cannot be considered as a legal heir despite which 1/4th deduction from the calculated income of the deceased was made by observing that as per the testimony of the mother, PW1 the father was suffering from Tuberculosis and was not earning and consequently was considered as the dependant.

7. It is submitted on *behalf of the Insurance Company* that there is an inherent contradiction in the observations made by the learned Tribunal. While it is observed that father is not the legal heir, yet he has been considered as a dependant and deduction of only 1/4th, has been made towards personal expenses.

8. *Learned counsel for the Claimants/Respondents* has submitted that mother had been examined who had stated that the father of the deceased had not been earning, therefore, the learned Tribunal has rightly deducted only 1/4th towards the expenditure of the deceased. There is no anomaly in the Award and the Appeal is liable to be dismissed.

9. Learned counsel for the Respondents has further argued that even though the accident had occurred in 2011, but by the revised Notification of the Minimum Wages in 2019, the amount had almost doubled and, therefore, 50% should have been added towards the Future Prospects instead of 40%, though no Appeal has been preferred. Learned counsel has placed reliance on the Judgment of Patna High Court in ***Manager, National Insurance Co. Ltd vs. Veena Singh and Ors, 2023 ACJ 2744.***

10. **Submissions Heard**.

11. In so far as the objection of the Insurance Company is concerned that there is an inherent contradiction in the observations of the learned Tribunal, it is fallacious for the simple reason that the father may not be a legal heir, but since he was definitely not earning and was suffering from tuberculosis, he was dependent upon the deceased for his survival. The Learned Tribunal has rightly held that even if the father was not technically the legal heir, he was still a dependent. In various cases even the brothers and sisters who have been found dependent upon the deceased have been considered while calculating the compensation.

12. There is no merit in the Appeal, which is hereby dismissed.

13. The Statutory Amount deposited by the Insurance Company be refunded in accordance with law.

NEENA BANSAL KRISHNA, J

OCTOBER 22, 2024
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