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

% Date of decision: 21st May, 2024

\+ MAC.APP. 268/2024, CM APPL. 30477/2024

THE ORIENTAL INSURANCE CO. LTD ..... Appellant
Through: Mr. Abhishek Gola, Adv.

versus

SMT YOGITA DEVI & ORS. ..... Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The appellant/insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988[1] assailing the impugned judgment-cum-award dated 12.03.2024 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Patiala House Courts, New Delhi[2] passed in MACP No.53/2019, thereby awarding a total compensation of Rs.43,15,340/- with interest @ 7.5% from the date of filing the claim petition i.e. 27.02.2019 till realisation.

2. None appeared for the respondents despite sending advance notice.

3. Learned counsel for the appellant/insurance company has urged that the main grievance of the appellant is that the learned Tribunal erroneously assumed the monthly income of the deceased at

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[1] M.V. Act
[2] Tribunal

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Rs.17,800/- per month while calculating the compensation under the head 'loss of dependency' although there were no reliable documents available on the record in order to prove the same in the nature of bank statement, ITR[3] or vouchers. It was urged that the salary certificate was only produced by **PW-6**/Amit Sinha claiming himself to be the Director of M/s Arnav Info Soft Pvt. Ltd. but he neither proved his authorisation to depose in the matter nor produced any documents.

ANALYSIS & DECISION:

4. Having heard learned counsel for the appellant/insurance company, I find that the present appeal is bereft of any merits.

5. Shorn of unnecessary details, evidently, the deceased Rakesh suffered fatal injuries in a motor accident that took place on 07.06.2018 at about 9.30 AM, about 5 kms ahead from Kasba Madhi on Manali to Rohtang Road, Himachal Pradesh when he was travelling in the offending taxi bearing No.HP-01 K2- 1791, which was being driven by respondent No.7/Gaurav Chandel, which taxi was registered in the name of respondent No.6/Smt.Yog Maya and admittedly insured with the appellant/insurance company. There is no challenge to the findings recorded by the learned Tribunal that it was respondent No.7 who was responsible for causing the accident and thereby resulting in the death of the deceased.

6. Insofar as the issue of quantum of compensation is concerned, it would be apposite to refer to the observations/findings recorded by the learned Tribunal which reads as under :

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[3] Income Tax Return

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21. The petitioner No. 1 being wife of the deceased has stepped into the witness box as PW4 and filed his evidence by way of affidavit as Ex. PW4/A wherein she has claimed that her deceased husband was Sales Executive with M/s Arnav Infosoft Pvt. Ltd., 134-A, Taimoor Nagar, New Friends Colony, New Delhi-1 10065 on monthly wages of Rs. 17,800/-. PW1 has tendered on record copy of High School Certificate of deceased as Mark A, copy of intermediate certificate of deceased as Mark B, copy of statement of marks of BA Final year of the deceased as Mark C, appointment letter of deceased as Ex. PW4/7 and wage certificate of deceased as Ex. PW4/8.

22. In order to prove the employment and income of deceased, the petitioners have examined on record one Sh. Amit Sinha. Director of M/s Arnav Info Soft Pvt. Ltd. as PW6 who deposed that the deceased Sh. Rakesh Nagar was working as Sales Executive in their organization on monthly wage of Rs.17,800/- per month w.e.f. 01.03.2018 to 07.06.2018. He has placed on record certified copy of salary record of deceased. During cross examination, he denied the suggestion that he is not the Director of M/s Arnav Info Soft Pvt. Ltd. He further denied the suggestion that Mr. Rakesh was not an employee with their company. He denied the suggestion that all the documents were false. He further denied the suggestion that he was telling lie.

23. Except putting bald suggestions to deny the genuineness of record and truthfulness of his testimony, no substantial cross has· been clone to elicit anything to raise any doubt on his version or on the record proved by him. Since no question was asked in the cross examination of PW6 regarding wage register, attendance register or ITR of employer company, lack of said documents are held to be not fatal for petitioners' claim. Hence, the income of deceased is assessed as Rs. 17,800/per month, as per salary record produced by the witness PW6.

24. In order to prove the age of deceased, PWI has tendered on record copy of Aadhar card of deceased Ex. PW4/6 and matriculation certificate of deceased as Mark A in which the date of birth of deceased is found recorded as 23.12.1993. Going by the same, the age of deceased as on 07.06.2018, i.e. date of accident was around 24 years, 5 months and 15 days. In terms of

law laid clown by the Hon'ble Supreme Court in the case of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, which has also been approved by the

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> Constitution Bench of the Hon'ble Apex Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680, the multiplier of '18' is applicable in the present case.
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> 25. Now coming to calculation of loss of dependency, the present matter has been filed by five petitioners, i.e. wife, children and parents of the deceased. Hence, in terms of law laid down by the Hon'ble Supreme Court in the case of Sarla Verma & Ors. (Supra) and Pranay Sethi & Ors. (Supra), 1/4th of earnings of deceased shall be deducted towards his personal and living expenses.
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> 26. Further, in view of the law laid down in the case of Pranay Sethi & Ors. (Supra), the petitioners are also held entitled to addition of 40% of earning of the deceased towards future prospects as the deceased was below the age of40 years at the relevant time of accident: Thus, the loss of dependency in the petitioners case comes to Rs. 40,37,040/- {(Rs.17,800/-X 12 X 18 X 3/4 X X 140/100)}.

7. It is pertinent to indicate that the claimants are the wife/widow of the deceased and his two children, besides his parents. PW-4 was the wife of the deceased who deposed that her husband was working as a sales executive with M/s Arnav Info Soft Pvt. Ltd. drawing a monthly wage of Rs.17,800/-. She placed on the record the appointment letter of the deceased (**Ex.PW4/7**) and wage certificate (**Ex.PW4/8**). Further, in order to substantiate the employment status of the deceased **PW-6**/Amit Sinha, the Director of the aforesaid company was also examined who deposed that the deceased-Rakesh Nagar was working as a 'Sales Executive' on the stated monthly wage w.e.f. 01.03.2018 to 07.06.2018. The plea by learned counsel for the appellant/insurance company that it was a short tenure does not cut any ice, as evidently it was due to the death in the motor accident, the career service came to an abrupt end.

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8. Further, the cross-examination of **PW-6** would show that his position as Director in the company was not challenged nor his knowledge about the facts pertaining to the employment of the deceased. He produced the certified copy of the salary record which was filed in the Court, and there was no cross-examination as to the salary record being incomplete or fabricated. It is but apparent that the deceased was 24 years of age and he had been able to secure a promising job at the age of 24 years, 5 months and 15 days, and therefore, the plea that there was proven no income tax record, cannot be countenanced.

9. Unhesitatingly, this Court finds that the learned Tribunal has correctly reckoned the monthly income of the deceased to be Rs.17,800/- per month and after applying the correct parameters as per law, the amount of compensation has been arrived at in a fair and just manner.

10. Accordingly, the present appeal is hereby dismissed.

11. The statutory amount of Rs.25,000/- deposited by the appellant/insurance company shall stand forfeited to the State for filing this appeal without any foundation.

12. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MAY 21, 2024/VLD

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