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

+ **MAC.APP. 586/2024**

SMT RENU AND ORS.

.....Appellants

Through: Mr. M.K.Sharma, Advocate.

versus

ARMAN AND ORS.

.....Respondents

Through: Mr. Rajeev M. Roy and Mr. P. Srinivasan, Advocates for R3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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14.11.2024

1. The Appeal under Section 173 of *the Motor Vehicle Act, 1988* ('*M.V. Act*' *hereinafter*) has been filed on behalf of the Appellants/Claimants for enhancement of the compensation amount of Rs.17,48,000/- along with the interest 7.5% p.a., granted vide Award dated 13.08.2024.
2. Briefly stated on 16.03.2017 at about 1:00 p.m. while Umesh Kumar was crossing the road near Bharat Dhram Kanta, Village Chapraulla District Gauttambudh Nagar, Uttar Pradesh; in the meanwhile, a Tractor bearing number HR 10J 0263 came from Dadri, which was being driven by its driver in a rash and negligent manner, hit him. Thereafter, he was shifted to Ganesh Hospital, Ghaziabad, from where he was subsequently referred to LNJP Hospital, Delhi. Mr. Umesh Sharma died subsequent to the injuries suffered by him. FIR No. 63/2017 under Section 279/338/304A of the *Indian Penal Code, 1860* ('*IPC*' *hereinafter*) was registered at Police Station Badalpur, District Gauttambudh Nagar, Uttar Pradesh, at the same day.
3. The *only grievance* of the Claimants, is that the income of the



deceased, has been taken as minimum wages of Uttar Pradesh when in fact, he was a resident of Delhi and it is the minimum wages of Delhi, which should taken to calculate the compensation.

4. **Submissions heard.**

5. The learned Tribunal has observed in the detail, as under:-

“23. PW2 testified that her husband was working as a Raj Mistri and was earning Rs. 20,000/- per month. Petitioners have claimed to be residents of Delhi as well as Gautam Budh Nagar, U.P. and there is no explanation how they could have been residing at two places simultaneously. In the evidence by way of affidavit Ex.PW2/A petitioner No.1 has mentioned that at the time of accident, her husband was going to his native home at Satyam Enclave Ghaziabad. She did not disclose the place of employment of her husband and merely stated that he was working as a Raj mistri. Apart from the oral assertion of PW1, no independent evidence has been led to show that husband of the petitioner No.1 was a skilled labour and earning Rs.20,000/- per month. It is admitted by PW2 that Aadhar card of the petitioners were prepared subsequent to the date of accident and after the death of deceased. She denied the suggestion that she was not a resident of Delhi. However, failed to bring on record any document to suggest that petitioner was residing and gainfully employed at the time of accident. Even in her testimony, petitioner No.1 is mum in this regard. Nothing has been brought on record before the Tribunal to suggest that petitioners alongwith deceased were residing in Delhi at the time of accident and it noteworthy to mention that petitioners have themselves mentioned their other address as that of Ghaziabad, U.P. The accident took place in Gautam Budh Nagar, Ghaziabad, U.P. and election I.D. card Ex. PW2/4 of the deceased shows his address as that of Delhi (which was prepared in the year 2015) but in the FIR, his brother has mentioned that Umesh Kumar was a resident of H.No. 36, Gali no. 1, Satyam Enclave, Chhapraula, Gautam Budh Nagar. Medical record of the deceased shows that he was treated in Ghaziabad, U.P. and further his Address was



disclosed in hospital as 'H No. 36, Satyam Enclave, Lal Kuan, Ghaziabad, U.P'. No document has been produced to suggest that deceased was residing and working in Delhi at the time of accident or that his children were studying in Delhi at the time of accident. Petitioner herself has not claimed in her testimony that the injured was working in Delhi and it is admitted that at the time of accident, petitioner was going to H.No. 36, Satyam Enclave, Village Chhapraula, Gautam Budh Nagar, U.P. It is not the plea taken by the petitioners in claim petition and evidence that her husband was temporarily residing and working in Delhi and his permanent address was that of Uttar Pradesh. The Tribunal is mindful of the fact that a person might be having identify proof of a particular place and migrate to another in search of work, without any address proof but in the case at hand, petitioners have nowhere stated that Umesh Kumar was not residing at Ghaziabad address as disclosed in FIR, medical record and claim petition or that while he was residing at U.P., he was working at Delhi. Petitioners has not disclosed the period since when they have been residing Gautam Budh Nagar address. Election I.D. card of the deceased suggest that deceased was residing in Delhi in the year 2015 but there is absolutely nothing to suggest that since year 2015 till the date of accident, he was residing in Delhi only. In any case, there is nothing in the testimony of PW2 to suggest that deceased was residing in Delhi at the time of accident. In her cross-examination, petitioner No.1 stated that her husband was not employed with anyone and he used to earn on daily basis wherever he used to get work and further admitted that the address in the discharge summary of Ganesh Hospital and medical bills /invoices is shown that of Ghaziabad U.P. and not Delhi address, where petitioner claimed to be residing in addition to Ghaziabad address. Suggestion was given to PW2 that her husband was not employed and not earning and that the petitioners are not residing in Delhi and identity cards (aadhar card) got prepared to confer jurisdiction on the Tribunal. Even while denying these suggestions, PW2 failed to disclose the place of employment of her husband and date on which, she shifted to



Delhi or the period for which she lived in Delhi and then shifted to Ghaziabad or vice versa. No document in proof of education of the deceased has been filed and document EPW2/5 cannot be considered as an education related certificate. Hence, in my considered view the income of the deceased has to be taken as per minimum wages of an unskilled worker applicable in U.P. and the same is Rs.7,215/- per month. Thus, the income of the deceased is considered to be Rs. 7,215/- per month.”

6. The learned Tribunal has observed that there was not a single document produced to prove that the deceased was a resident of Delhi. The I.D of the deceased had been produced of 2015, but it was disbelieved by the Learned Tribunal by observing that it was not understandable as to how a person could be resident of two places simultaneously. There was not an iota of evidence led by any of the witnesses to depose that he was in fact a daily wager in Delhi.
7. For the cogent reasons as explained in detail by the learned Tribunal, it has been rightly held that the deceased was a resident of Uttar Pradesh and was employed therein. The wages of the deceased has been rightly taken as per the Minimum Wages for Uttar Pradesh.
8. There is no merit in the Appeal, which is hereby dismissed.
9. The Appeal is disposed of accordingly.

NEENA BANSAL KRISHNA, J

NOVEMBER 14, 2024/RS