



2024:DHC:10150



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 06th December, 2024

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MAC.APP. 354/2018, CAV 304/2018,
CM APPL. 13933/2018 (stay)

THE ORIENTAL INSURANCE CO. LTD.Appellant

Through: Mr. Pradeep Gaur and Mr. Amit
Gaur, Advocates.

versus

1. SMT. SHANNO
W/O LATE SH. SHAMSHAD ALIRespondent No.1
 2. SH. IRSHAD ALI
S/O LATE SH. SHAMSHAD ALIRespondent No. 2
 3. SH. DILSHAD
S/O LATE SH. SHAMSHAD ALIRespondent No. 3
 4. SHAINA
S/O LATE SH. SHAMSHAD ALIRespondent No. 4
 5. SMT. NOORJAHAN
W/O LATE SH. MEHMOOD ...Respondent No. 5
- ALL R/O H.NO. 460, GALI NO. 8,
MILAN VIHAR, NEAR VILLAGE
JAGATPUR,
DELHI-110084
6. MOHD. RIZWAN
S/O MOHD. MOHINRespondent No. 6
 7. SH. GURSHARAN SINGH & HARVINDER SINGH

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...Respondent No. 7

Through: Mr. Ashok Kumar Jha, Advocate for
R1 to R5.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

MAC.APP. 354/2018

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the *Appellant/Insurance Company* against the Award dated 05.01.2018 whereby the compensation has been granted in the sum of Rs.23,38,000/- along with the interest @ 9% p.a. on account of demise of Sh. Shamshad Ali, aged about 39 years in a road accident on 02.01.2009.
2. The Award has been challenged on the *sole ground* that the income of the deceased has been taken as Rs.12,500/- even though he was working in an unauthorized Sector as a person fixing the lowers of shoes. Though three witnesses have been examined, but none of them have been able to prove the actual earning of the deceased. The Certificate produced by PW-2 also does not establish that he was earning Rs.12,500/- per month, as has been assessed by the learned Tribunal.
3. In their Written Submissions the Appellant/Insurance Company has placed reliance on *Sarla Verma v. DTC*, (2009) 6 SCC 121; *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 and *National Insurance Co. Ltd. v. Yad Ram* 2023:DHC:2194 to state that Minimum Wages should have been taken for calculation of loss of dependency in the impugned Award.



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4. *Learned counsel on behalf of the Respondents/Claimants*, has also argued that it is a known fact that in an unorganized Sector, there can be no proof of the actual income as has also been observed by the learned Tribunal. There is no infirmity in the impugned Order and the Appeal is liable to be dismissed.

5. **Submissions heard and record perused.**

6. *Briefly Stated*, on 02.01.2009 at about 5.00 pm, deceased was going on his motorcycle bearing no. DL-8S-NC-1807 to Azadpur from Mukundpur, when suddenly a truck bearing no. HR-38C-7768, which was being driven by its driver, Mohd. Rizwan in a rash and negligent manner and at a high speed, hit the deceased. Due to the impact, the deceased fell on the road and received fatal injuries and died.

7. An FIR bearing no. 02/2009 u/s 279/304-A *Indian Penal Code, 1860* ('IPC' hereinafter) was registered at P.S. Adarsh Nagar against Mohd. Rizwan/Respondent No. 6.

8. Claim petition u/s 166 and 140 of M.V. Act was filed by the LR's of the deceased Shamshad All claiming compensation for the death of the deceased in the accident dated 02.01.2009.

9. The *sole ground* of challenge pressed by the *Appellant/Insurance Company* is that the income of the deceased was taken as Rs.12,500/- per month even though, he was working in an unauthorized sector as a person fixing the lowers of shoes.

10. Respondent No. 1/Smt. Shanno examined herself as PW-2 and in her Affidavit i.e., Ex.PW-2/A stated that deceased was working as a *Shoe Maker* i.e., ladies sandal pasting work *on contract basis* and used to earn Rs.4000/- to Rs.5000/- per week from *M/s Shri Durga Enterprises* at WZ-308,



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Madipur Village, Delhi. Apart from the said work, the deceased used to also work on part time basis with other Frms and earn additional amount of Rs.5000/- per month.

11. Pertinently, testimony of PW-2, Smt. Shanno had not been questioned by any of the Respondent in the cross-examination. The only question put was about the proof of his income, which was asserted to be Rs.12,500/- per month.

12. Further, PW3/Naushad Ali, PW4/Irshad Ali and PW7 Md. Junaid Alain have also supported the statement of PW-2 Smt. Shanno and deposed that the deceased Shamshad Ali was their colleague and at the time of accident, was working for Sh.Jatinder Kumar, proprietor of M/s.Shri Durga Enterprises / Janak Footwear, on contractual/commission i.e., on piece rate basis.

13. It is also pertinent to note that DAR had been filed by the Police, wherein it is mandatorily required to verify the profession of the deceased. Moreover, the Insurance Company also has not taken any steps to confirm and verify the profession or the income of the deceased. There is no reason to disbelieve the testimony of PW-2, Smt. Shanno about her husband being a Shoemaker. Insofar as the documents in proof of his occupation are concerned, it cannot be overlooked that these are all unorganized sectors and there is no appointment letters for anybody to become a Shoe maker. To insist on some documentary evidence, may be a hyper technical approach, which is not warranted especially in these compensation cases.

14. ***The income of the deceased has rightly been calculated by the Ld. Tribunal and does not warrant any interference on this ground.***

15. The Appeal is without merit and is dismissed.



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16. The Appeal is accordingly, disposed of along with the pending Application(s), if any.

**NEENA BANSAL KRISHNA
(JUDGE)**

DECEMBER 6, 2024/RS

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