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

% Judgment delivered on: 24<sup>th</sup> January, 2022

+ MAC.APP. 19/2022& CM APPL. 4119/2022

UNITED INDIA INSURANCE CO.LTD ..... Appellant

versus

FARIDA SAROSH POONAWALA AND ORS ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner: Mr. Sankar N. Sinha, Advocate

For the Respondents: Mr. Varun Sarin, Advocate for R-1 to R-3

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J.**

**CM APPLN. 4120/2022 (Exemption)**

Allowed, subject to all just exceptions.

**CM APPL. 4121/2022 (condonation of delay)**

The Supreme Court by its orders 23.03.2020, 27.04.2021 and 10.01.2022 in Suo Motu Writ Petition (Civil) No.3 of 2020 has suspended the period of limitation in view of the ongoing pandemic. Accordingly, there is no delay in filing the appeal.

The application is disposed of.

**MAC. APP. 19/2022**

1. The hearing was conducted through video conferencing.
2. Appellant impugns award dated 22.03.2021 whereby the detailed accident report has been disposed of and compensation awarded.
3. Issue notice. Notice is accepted by learned counsel appearing for respondent no. 1 to 3.
4. Since there is no dispute with regard to the liability of the insurance company vis-à-vis driver and owner of the offending vehicle, service of respondent no. 4 and 5 is dispensed with.
5. Learned counsel for the appellant contends that the tribunal has erred in awarding compensation to respondent no. 2 and 3 who were children of the wife of the deceased from her first marriage. He submits that they cannot be treated as dependant family members of the deceased.
6. He further submits that the tribunal has erred in taking the monthly salary of the deceased at Rs. 41,807/- whereas the claim of the wife of the deceased was that the salary only Rs. 35,000/- per month.
7. It is submitted by learned counsel for respondent no. 1 to 3 that claimants 2 and 3 are children and were living with the deceased as such would be treated to be dependent upon him.
8. With regard to the submissions of learned counsel for the appellant that respondent no. 2 and 3 cannot be regarded as dependants, in my view,

same will make no difference to the computation of compensation.

9. Tribunal has applied the law as laid down by the Supreme Court in *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. (2009) 6 SCC 121*. The deductions from the income of the deceased would be 1/3<sup>rd</sup> as the deceased was married. Tribunal has made deduction of 1/3<sup>rd</sup> from the income. So there is no error in computation and it would not make any difference to the computation wither by taking respondent no. 2 and 3 as dependants or not.

10. Further, contention of learned counsel for the appellant that the tribunal has erred in taking the salary at Rs. 41,807/- instead of Rs. 35,000/- , in my view, also does not have any merit for the reasons that the Court while computing compensation has to award fair and just compensation.

11. Even though the claimants had stated that the deceased was earning about Rs. 35,000/- per month, tribunal has relied upon the documentary evidence that had come on record.

12. The employer had produced Form-16 of the deceased for the period 2015-16 (Ex. PW3/1) and 2016-17 (Ex. PW3/2) which showed that the total salary received by the deceased in 2015-16 was Rs. 4,89,676/- and in 2016-17 was Rs. 5,22,551/-. The accident had taken place on 26.02.2017.

13. There was a dispute raised by the insurance company as to whether the salary as reflected in Form-16 for the year 2016-17 was for the whole year or for 11 months. Tribunal has noticed that no question was put in

examination or cross-examination in this regard. However, learned counsel for the claimants fairly conceded that in view of the lack of clarity the salary be taken for entire year, which is what the tribunal did and accordingly computed the salary at Rs. 41,807/- per month and thereafter applied the judgment of the Supreme Court in *Sarla Verma (Supra)* and *National Insurance Company Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680*.

14. In so far as the grant of compensation under non pecuniary head is concerned, reference may be had to the judgment of the Supreme Court in *Gujarat State Road Transport Corporation Vs. Ramanbhai Prabhatbhai & Another, (1987) SCC (3) 234* where by the Supreme Court has held that *having regard to the condition of the Indian society, every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation.*

15. Further, Supreme Court has held *that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation.*

16. A similar view has been taken by the Supreme Court in *N. Jayasree & Ors. Vs. Cholamandalam MS General Insurance Company Ltd., 2021 SCC Online SC 967* wherein the Supreme Court has held that *the term 'legal representative' should be given a wider interpretation for the*

*purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. The Supreme Court held that the Motor Vehicle Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the Motor Vehicle Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent.*

17. In view of the above, I find no infirmity in the impugned award and the computation of compensation by the tribunal.

18. The appeal is accordingly dismissed.

19. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

**SANJEEV SACHDEVA, J**

**JANUARY 24, 2022**

**'rs'**