2025:DHC:1436

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

% ***Pronounced on: 04th March, 2025***

\+ **MAC.APP. 406/2022**

KOTAK MAHINDRA GIC LTD
H- 78, 7TH Floor, 23 rd Himalaya House,
K. G . Marg, Delhi

..... Appellant

Through: Mr. Sameer Nandwani, Advocate through VC.

versus

1. PARVATI BASNET
W/o. Sh. Dilip Basnet ..... Respondent No.1

2. **DEEPA BASNET**
D/o. Sh. Dilip Basnet ..... Respondent No.2

Both R/o.: -
H. No. 14, Gali No. 1,
Near Baby Public School,
Salarpur, Gautam Budh Nagar, U.P.

3. DHEERAJ KUMAR
S/o. Sh. Harish Chand
R/o.: E-322, New Ashok Nagar,
Delhi. ..... Respondent No.3

4. **GUDDU SINGH**
S/o Sh. Pappu Singh
R/o E-360, Gali No. 10,
New Ashok Nagar,
Preet Vihar, Delhi-110091 ..... Respondent No.4

Through: Mr. Manish Maini, Advocate.

MAC.APP. 13/2024

1. PARVATI BASNET
W/o. Sh. Dilip Basnet ..... Appellant No.1

2. **DEEPA BASNET**
D/o. Sh. Dilip Basnet ..... Appellant No.2

Both R/o.: -
H. No. 14, Gali No. 1,
Near Baby Public School,
Salarpur, Gautam Budh Nagar, U.P.

Through: Mr. Sameer Nandwani, Advocate through VC.

versus

1. **KOTAK MAHINDRA GIC LTD**
H- 78, 7TH Floor, 23rd Himalaya House,
K. G . Marg, Delhi ..... Respondent No.1

2. **DHEERAJ KUMAR**
S/o. Sh. Harish Chand
R/o.: E-322, New Ashok Nagar,
Delhi. ..... Respondent No.2

3. **GUDDU SINGH**
S/o Sh. Pappu Singh
R/o E-360, Gali No. 10,
New Ashok Nagar,
Preet Vihar, Delhi-110091 ..... Respondent No.3

Through: Mr. Manish Maini, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Appeals arise from the Award dated 31.08.2022 and shall be decided together. The Tribunal awarded a compensation in the sum of Rs.31,86,556/- along with interest @8% per annum to the Claimants on account of demise of Sh. Dilip Kumar in a road accident on 21.01.2019.

2. ***Briefly stated*** Sh. Dilip Kumar was driving his TVC Moped bearing Registration No.UP-16-BP-3050 and was descending from the flyover towards Noida in front of Mayur Vihar-I Metro Station. He was hit by Mahindra Bolero car bearing registration No.DL-1LY-5407 which was being driven by the Respondent driver, Sh. Dheeraj Kumar in a rash and negligent manner. Consequent to the accident Dilip Kumar, suffered fatal injuries.

3. FIR No.22/2019 under Section 279/338 IPC was registered. On completion of investigation Chargesheet was filed against Sh. Dheeraj Kumar.

4. Detailed Accident Report was filed by the Police before the learned Tribunal. A Claim Petition under Section 166 & 140 Motor Vehicles Act was filed by the Claimants, who are the wife and daughter of the deceased.

5. The learned Tribunal granted compensation in the sum of Rs. 31,86,556/- along with interest @8% per annum.

6. The *Appellant-Insurance Company has challenged the Award* on the following grounds:-

(i) that the deceased-Shri Dilip Kumar Basnet was 49 years old and the multiplier should have been taken as 13 instead of 15;

(ii) that the future prospects should have been given as 25% instead of 30%;

(iii) that the Minimum Wages of the deceased should have been taken of Uttar Pradesh instead of Delhi, as the deceased and his family are the permanent residents of Uttar Pradesh; and

(iv) that the interest granted @ 8% per annum is much higher and should have been taken as @ 5% per annum.

7. The ***cross Objections under 41 Rule 22 CPC were filed on behalf of the Claimants*** wherein the enhancement of the amount is sought, on the following grounds:-

(i) That the deceased was 40 years old and not 41 years and the multiplier of 15 has not been applied correctly;

(ii) The future prospects have been granted at 30% when it ought to have been 50% since he was a permanent employee since February, 2003 and serving as an Assistant Supervisor with Moser Baer Company;

(iii) That merely because the Company stopped functioning in India since September, 2018, would not render the deceased a marginalised worker/Minimum Wager with his vast experience and his potential remained unaffected;

(iv) The interest rate has been curtailed to 8% p.a. without any cogent reason.

8. **Submissions heard and record perused.**

9. The quantum of compensation as determined by the learned Tribunal

has been questioned by both the Insurance Company as well as the Claimants.

Multiplier:

10. The *first ground* of challenge is that the age of the deceased was determined as 40 years and Multiplier of 15 was applied.

11. PW-2 Smt. Parvati Basnet in her testimony as PW-2 had proved the PAN Card Ex.PW.2/2, AADHAR Card, Ex.P.2/4 of the deceased wherein the date of birth of the deceased was reflected as 03.12.1978. According to these documents authenticity of which has not been questioned by the Insurance Company, the age of the deceased was held as 40 years 1 month and 18 days on the date of his demise in the accident on 21.01.2019.

12. As per *Sarla Verma (Smt) & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the Multiplier of 15 has been defined for the deceased in the age group of 36 to 40 years and thereafter, the group provided is 41-45 years. The learned Tribunal, ***therefore has rightly taken the Multiplier is 15 which does not merit any interference.***

Minimum wages:

13. The *second ground* for questioning the compensation is whether the Minimum Wages of the deceased should have been taken of Uttar Pradesh or of Delhi, since the family members of the deceased were permanent residents of Uttar Pradesh.

14. Smt. Parvati Basnet, wife of the deceased had deposed that he was working as an Assistant Supervisor at Moser Baer, Okhla, Delhi and was earning Rs.20,642/- per month in support of which she proved the passbook Ex.PW-1/4 and also the Information Report of loss of documents of the

deceased Ex.PW-1/10. She further deposed that his income could have increased three times in his lifetime.

15. The Appointment Letter and pay slips for the month of July and October, 2017 are Ex.PW-1/1 & Ex. PW1/2. The Service Certificate and Letter of Discharge both dated 24.09.2018 are Ex.PW-2/8.

16. She, in her cross examination, has deposed that she had studied upto 10th standard while the deceased had studied upto 11th standard and they both belong to Nepal. She further stated that her husband used to reside at Uttar Pradesh. The salary slip for the month of July, 2017 issued by Moser Baer, Ex. PW-1/1 indicates that the deceased was employed as a Security Guard in Greater Noida and was getting a total salary of Rs.19,651/-p.m.

17. The Appointment Letter of February, 2003 was issued by Moser Baer whereby he was appointed as a Guard initially for a period of six months w.e.f. 01.02.2003. In the Appointment Letter as well the address of the deceased was reflected as Moser Baer, Uttar Pradesh and was shown as a permanent resident of Nepal. Admittedly, Company ceased to function from 20.09.2018.

18. Even if it is accepted that the deceased who was working as a Security Guard ceased to his employment with Moser Baer, it can be reasonably presumed that he would have got an alternative job as a Security Guard. Therefore, his salary has been rightly taken as Rs. 19,651/- per month, and ***does not warrant any interference.***

19. The *next contention* has been raised on behalf of the Appellant that the wages of the deceased must be determined according to the Minimum Wages prevalent in Uttar Pradesh. However, the income of the deceased has

been taken as per the salary slip of the deceased and ***thus, the question of Minimum Wages of either Uttar Pradesh or Delhi does not arise***.

Future Prospects:

20. The learned Tribunal has added 30% towards future prospects to the income of the deceased. He was 40 years old at the time of the accident. In terms of *Sarla Verma (Supra)* the future prospects @ 30% considering the age and nature of job of the deceased, has been rightly awarded by the Tribunal and ***the same does not merit any interference.***

Rate of Interest:

21. The *last contention* is that the rate of interest @8% per annum has not been granted correctly, which is on the higher side as per the Appellant/Insurance Company and on the lower side as per the Claimants/Respondents. Considering the prevailing rate of interest at that time, rate of interest at 8% p.a. from the date of filing the petition till the Date of payment is correctly granted by the Ld. Tribunal and warrants no interference.

Conclusion:-

22. The compensation has been calculated by the learned Tribunal in accordance with the settled principles. There is no merit in the Appeals filed on behalf of the Claimants as well as the Insurance Company.

23. There are no grounds for interference and the Appeals are hereby dismissed. The Statutory Amount deposited be returned, in accordance with law.

(NEENA BANSAL KRISHNA)

JUDGE

MARCH 04, 2025
rk