

**IN THE SUPREME COURT OF INDIA
EXTRAORDINARY CIVIL APPELLATE JURISDICTION**

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 4986 OF 2019

NATIONAL INSURANCE COMPANY LIMITED

PETITIONER

VERSUS

A. DHAVAMARY AND OTHERS

RESPONDENTS

ORDER

1. Delay condoned.
2. The limited grievance raised by the petitioner-Insurance Company in the instant case relates to the inclusion of festival advance in the salary certificate of the deceased for the month of July, 2014, that includes Festival advance of ₹20,000/- (Rupees Twenty Thousand), which it is submitted, has resulted in inflating the monthly salary of the deceased from ₹70,021/- (Rupees Seventy Thousand and Twenty One) to ₹91,494/- (Rupees Ninety One Thousand Four Hundred and Ninety Four).
3. Learned counsel for the petitioner – Insurance Company refers to the award dated 01st September, 2017 passed by the Motor Accident Claims Tribunal¹ at Cuddalore that has taken note of the testimony of PW3, the Additional Chief Manager (HR) of Neyveli Lignite Corporation (Employer of the deceased). PW3 deposed about the service particulars, salary details and income tax particulars of the deceased. The MACT noted that Ex.P5, the pay certificate of the deceased revealed that he was fetching a salary of ₹70,021/- (Rupees Seventy Thousand and Twenty One) per

1 For short the 'MACT'

month. Ex. P7 is the pay certificate of the deceased for the month of July, 2014 which shows that the deceased had drawn a sum of ₹91,494/- (Rupees Ninety One Thousand Four Hundred and Ninety Four). However, Ex. P7 includes festival advance and other allowances, which the MACT had excluded and had relied on the salary of the deceased as mentioned in Ex.P5, i.e. ₹70,021/- (Rupees Seventy Thousand and Twenty One) per month for assessing the compensation payable to the respondents no. 1 and 2-claimants.

4. It is submitted by learned counsel for the petitioner-Insurance Company that the salary certificate of the deceased for the month of July, 2014 included festival advance and other allowances, which were recoverable from the deceased on a monthly basis and ought not to have been taken into consideration for assessing his monthly income.
5. There is merit in the submission made by learned counsel for the petitioner-Insurance Company. The salary slip of the deceased for the month of May, 2014 does not tally with the salary certificate for the month of July, 2014, the only variation being an additional amount towards festival advances, which in our opinion ought to be excluded while considering the salary certificate of the deceased. It is therefore directed that the festival advance released in favour of the deceased as per Ex.P7 be excluded from his salary certificate while maintaining the rest of the certificate as it is for the purposes of computing the compensation payable to the respondents no. 1 and 2 – claimants. In other words, the salary certificate of the deceased for the month of May, 2014 shall be taken into consideration for purposes of computing the

compensation payable to the respondents no.1 and 2 – claimants.

6. We may also note that compensation towards loss of consortium as granted by the MACT as ₹1,00,000/- (Rupees One Lakh), has been reduced in the impugned order to ₹40,000/- (Rupees Forty Thousand). Having regard to the fact that the deceased is survived by a wife and a mother, it is directed that both the claimants are entitled to a sum of ₹40,000/- (Rupees Forty Thousand) each towards loss of consortium.
7. A fresh computation shall be done within four weeks from the date the aforesaid order is placed before the learned MACT. Any further amount that is found to be due and payable to the respondents no. 1 and 2 – claimants shall be deposited by the petitioner-Insurance Company with the MACT immediately thereafter. The parties shall appear before the MACT for the said purpose on 30th July, 2024.
8. With the aforesaid directions, the impugned order is partly modified and the petition for Special Leave to Appeal is disposed of.

.....J.
[HIMA KOHLI]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
MAY 16, 2024
PS

ITEM NO.9

COURT NO.10

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4986/2019

(Arising out of impugned final judgment and order dated 09-07-2018 in CMA No. 594/2018 passed by the High Court Of Judicature At Madras)

NATIONAL INSURANCE COMPANY LTD.

PETITIONER(S)

VERSUS

A. DHAVAMARY & ORS.

RESPONDENT(S)

(IA No. 19321/2019 - CONDONATION OF DELAY IN FILING)

Date : 16-05-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Mr. Amit Kumar Singh, AOR
Ms. K Enatoli Sema, Adv.
Ms. Chubalemla Chang, Adv.
Mr. Prang Newmai, Adv.

For Respondent(s) Mr. A.K. De, Adv. (Amicus Curiae)
Ms. Ananya De, Adv.
Ms. Rebbeca Dias, Adv.
Mr. Zahid Ali, Adv.
Mr. Rameshwar Prasad Pandey, Adv.

Mr. M.P. Parthiban, AOR
Ms. Priyaranjani Nagamuthu, Adv.
Ms. Shalini Mishra, Adv.
Mr. R. Sudhakaran, Adv.
Mr. Bilal Mansoor, Adv.
Mr. Shreyas Kaushal, Adv.
Mr. Amod Bidhuri, Adv.
Mr. P.V.K. Deivendran, Adv.

**UPON hearing the counsel, the Court made the following
O R D E R**

1. Delay condoned.
2. The Petition for Special Leave to appeal is disposed of in terms of the signed order. Pending application(s), if any, are also disposed of.

**(POOJA SHARMA)
COURT MASTER (SH)**

**(NAND KISHOR)
COURT MASTER (NSH)**

(Signed order is placed on the file)

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