

**Court No. - 2**

**Case :-** FIRST APPEAL FROM ORDER No. - 281 of 2005

**Appellant :-** New India Assurance Co Ltd

**Respondent :-** Smt. Hanifa And Others

**Counsel for Appellant :-** Natish Chaturvedi, Uday Narayan Khare

**Hon'ble Saral Srivastava, J.**

1. Heard learned counsel for the appellant.
2. The present appeal has been filed by the appellant-insurance company challenging the award dated 03.12.2004 passed by Workmen Compensation Commissioner under Workmen Compensation Commissioner, 1923 & Deputy Labour Commissioner, U.P. Meerut in W.C.A. No.189/2003.
3. Challenging the award, learned counsel for the appellant has contended that the deceased was a bachelor, therefore, the Commissioner should have applied the factum corresponding to the age of the parents, therefore, the compensation awarded by the Commissioner is excessive. It is further submitted that the Commissioner has erred in law in assessing the income of the deceased to be Rs.3500/- per month. It is submitted that no documentary evidence on record proving the salary of the deceased and in such view of the fact, the Commissioner has acted illegally in holding the salary of the deceased to be Rs.3500/-.
4. Be that as it may, so far as the contention of learned counsel for the appellant with respect to wrong factum is concerned, the claim petition has been instituted under Workmen Compensation Act, 1923, and therefore, procedure contemplated under the said act for computing the

compensation shall be applied, and accordingly, this Court does not find any illegality committed by the Commissioner in applying the factum corresponding to the age of the deceased and not the parents.

5. So far as the issue with regard to assessment of the income of the deceased is concerned, the Commissioner in computing the salary of the deceased to be Rs.3500/- placed reliance upon the testimony of claimant, owner and driver of the offending vehicle. The insurance company did not lead any evidence in rebuttal to the testimony of claimant, owner and driver of the offending vehicle with regard to salary of the deceased. In such view of the fact, this Court is of the view that the Commissioner has rightly held the salary of the deceased to be Rs.3500/-.

6. Thus, for the reasons given above, the finding of the Commissioner on both the issues raised by the appellant before this Court being a finding of fact and is not liable to be interfered with. The appeal under Section 30 of the Workmen Compensation Act would lie only on substantial question of law. In the instant case, no substantial question of law is involved, therefore, the appeal lacks merit and is accordingly ***dismissed.***

**Order Date :- 17.10.2023**

R.S. Tiwari