

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No. 7416 of 2014 (O&M)
Date of Decision: November 09, 2017**

Sonu and another

...Appellants

Versus

Sher Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Shiv Kumar, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent no.7-Insurance Company.

ANITA CHAUDHRY, J.

This the claimants' appeal seeking enhancement of the award dated 04.03.2014 passed by the Motor Accident Claims Tribunal, Palwal (here-in-after referred to as the Tribunal).

Ajit was 23 years old when he died in a motor vehicular accident on 24.04.2011. A claim petition was filed by his widow and parents. A child was born after the death. It was claimed that the deceased was earning Rs.21,000/- per month and was running business of tent-house but no evidence could be produced. The income tax return Mark-A was submitted, which the Tribunal rejected as it found it to be forged and fabricated. The income of the deceased was taken as that of a labourer at Rs.4,500/- per month and a deduction of 1/3rd was made and

multiplier of 16 was applied to calculate the compensation at Rs.5,76,000/-. Rs.10,000/- was allowed for funeral, transportation and loss of consortium allowing a total claim of Rs.5,86,000/-.

The submission on behalf of the appellants is that since the minimum wages have been taken and the minimum wages are fixed after determining a number of factors and under an Act, therefore, it is the income which is established and they were entitled to addition of future prospects. It was urged that the Tribunal had granted only a lump sum of Rs.10,000/- including loss of consortium.

On the other hand, the submission is that since the deceased was taken as a labourer, there would be no addition towards future prospects as the income is not established. It was urged that the income tax return which was filed was for a period which was after the accident and was rejected by the Tribunal and the minimum wages should not be considered as income established because under the Minimum Wages Act, it is the income which is presumed and is not established.

The minimum wages are determined by the government taking into account several factors as poverty threshold, the prevailing wage rates as determined by the labour force survey, the socio economic indicators, gross regional domestic products and the prevailing market rates etc. It also takes into account the cost of living, the cost of training, the demand and supply. The minimum wages are fixed under the Act. The minimum wages can be taken as 'income established' and even in the case of a labourer when the minimum wages are taken, there

would be an addition towards future prospects considering the latest judgment rendered by Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Pranay Sethi in SLP (Civil) No.25590 of 2014.

In the present case, since the minimum wages are being taken for the purposes of calculations, an addition of 40% would be made towards future prospects. Taking the income as Rs.4,500/- per month and after making an addition of 40%, the income would be Rs.6,300/-. Considering the age of the deceased, the deduction would be $\frac{1}{3}^{\text{rd}}$ as the father is not dependent. After making a deduction of $\frac{1}{3}^{\text{rd}}$ the monthly income for the purposes of calculations would thus be Rs.4,200/- and the compensation would be $\text{Rs.4,200} \times 12 \times 18 = \text{Rs.9,07,200/-}$. To this a sum of Rs. 15,000/- is added for loss of estate, Rs.40,000/- is added for loss of consortium and Rs.15,000/- is added as funeral expenses. The total of this comes to Rs.9,77,200/-. The Tribunal had allowed Rs.5,86,000, which would be deducted and the remaining amount would be payable only to the appellants in equal share. The share of the minor would be deposited in the Fixed Deposit Receipt till she attains majority. The insurance company would pay the amount with interest @ 6% from the date of filing of appeal till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

November 09, 2017

sunil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No