

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

FAO No.256 of 2015 (O&M)

Date of decision : 29.10.2018

Oriental Insurance Company Ltd.

...Appellant

Versus

Shiv Kumar Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Talwar, Advocate and
Mr. Akshay Bansal, Advocate for the appellant.

Mr. Santosh Kumar, Advocate for respondent Nos.1 to 4.

ANIL KSHETARPAL, J. (ORAL)

Insurance Company is in the appeal against the award passed by the Motor Accident Claims Tribunal awarding a sum of ₹7,11,240/- on account of death of Mintu Kumar son of Bhairaw Rai aged about 22 years on 18.04.2011 who was working as a driver on a Heavy Transport Vehicle (Truck).

Learned counsel for the appellant has challenged the award on two counts:-

1. Since two trucks had hit each other, head on, therefore, the Tribunal must assume that the deceased (the driver of ill-fated vehicle) as well as the driver of the offending vehicle were contributory negligent.
2. Income assessed by the Court at ₹6,030/- per month is on the higher

side.

It is not in dispute that the appellant or anyone from the respondents including the driver of the offending vehicle have not been appeared in evidence. In the present case, person working as a Cleaner and sitting in the ill-fated vehicle has been examined by the claimant, who has supported the case of the claimant. Since, no evidence has been led by the respondents, before the Motor Accident Claims Tribunal, therefore, the finding of the Tribunal on this aspect need no interference.

Next argument of the learned counsel is with respect to the income of the deceased. It is not disputed that Mintu Kumar who was aged about 22 years, working as a professional driver of a commercial Heavy Transport Vehicle. No doubt, the income as such has not been proved. Although it was claimed to be ₹10,000/- per month, however, the Tribunal has assessed the income taking the deceased to be unskilled labour.

Learned counsel for the appellant has relied upon a Notification issued by the Government of Haryana, Labour Department which shows that the minimum income of the highly skilled worker is ₹5152.98/-. Hence, he submitted that the Tribunal erred in assessing the income at ₹6,030/- per month.

On examination of the award passed by the Motor Accident Claims Tribunal, it is apparent that the Motor Accident Claims Tribunal has relied upon a Notification issued by the office of Deputy Commissioner on 22.06.2011 notifying the minimum rate of wages of the employees for the year 2011-2012 at ₹6026/- per month with regard to the unskilled labour.

In the present case, it has come in evidence that Mintu Kumar

was employed and working in National Capital i.e. Delhi, therefore, the Notification issued by the State of Haryana, Labour Department would have no application. Even otherwise, the judicial notice can be taken of the fact that the salary of the driver of a commercial Heavy Transport Vehicle is much more than minimum wages.

Hence, there is no ground to interfere.

Appeal is dismissed.

29.10.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No