IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2428 of 2018 (O&M)
Date of Decision: May 04, 2018

New India Assurance Company Ltd. ...Appellant

Versus

Sandeep Kaur and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ashwani Talwar, Advocate
for the appellant.

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HARINDER SINGH SIDHU, J.

For the reasons stated in the application, the delay of 03 days in filing the appeal is condoned.

The insurer has filed the present appeal challenging the award dated 10.1.2018 passed by the Motor Accident Claims Tribunal, Ludhiana (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 22.5.2016 in the area of Main Road, Tajpur Chowk Ludhiana a vehicular accident took place involving car No.PB-30J-6871 (herein for short 'the offending vehicle'), wherein, Pawan Kumar lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

On a claim petition having been filed by the legal representatives of Pawan Kumar, the Tribunal assessed the income of the deceased at

Rs.12,000/- per month treating him to be a skilled labour, added 40% towards future prospects, deducted 1/4th towards his personal expenses and applied the multiplier of 16 (deceased aged 32 years). The Tribunal assessed the compensation as under:-

Sr.No.	*Head*	*Calculation*
1.	*Income/Salary*	*Rs.1,44,000/- per annum*
2.	*40% of No.1 above to be added as future prospect*	*Rs.1,44,000+57600 i.e. 40% = 20,1600/- per annum*
3.	*¼ of 2 above deducted as personal expenses of the deceased*	*201600-50400 i.e. ¼ = 151200/- per annum*
4.	*Compensation after multiplier of 16 is applied*	*151200 x 16 = 24,19,200/-*
5.	*a)Loss of consortium to wife* *b) Loss of love, affection, care and guidance of minor children* *c) Loss of love and affection of mother*	*a)Rs.40,000/- to claimant no.1* *b)Rs.15,000/- to claimants No.2 and 3 jointly* *c)Rs.15,000/- to claimant No.4*
6.	*Funeral Expenses*	*15,000/-*
7.	*Amount of medical bills*	*23,628/-*
8.	*Cost of petition assessed*	*3,000/-*
	Total compensation amount	25,30,828/-

Challenging the Award, Ld. Counsel for the appellant – Insurer the sole contention of Mr.Talwar, Ld. Counsel for the appellant Insurance Company is that the Tribunal has erred in assessing the income of the deceased at Rs.12,000/- per month. He argued that though it was pleaded that the deceased was doing the work of sewing and tailoring of hosiery goods however, no evidence with regard to his earnings was produced. Mr. Talwar argued that in the absence of such evidence, his income ought to have been assessed as per the Minimum Wages payable to a skilled worker, The Minimum wages for a skilled worker as on 1.3.2016 were Rs.8887.52

per month.

It is not possible to agree with the aforesaid contention of Mr.Talwar.

Hon'ble the Supreme Court dealing with compensation claims of self employed persons from the un-organized sector, in ***Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236*,** has held that persons from the un-organized sector doing their own business cannot be expected to produce documents to prove their income. In such cases, if the claim with regard to income is not exorbitant or excessive, but, is in consonance with the ground realities then it can be accepted even without documentary evidence in support thereof. This view was followed by the Hon'ble Supreme Court in ***Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735*,** while observing as under:-

> ***"8.*** *The appellant claimant in his appeal further claimed that he had been earning Rs.10,000 p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs 3500 p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganised sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd., has held as under: (SCC pp. 242-43, paras 13-15)*
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> > *"13. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a coolie and was earning Rs 4500 per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs 3000 only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs 100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs 3000 per month.*

Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork, which may include the ground realities prevailing at the relevant point of time.

15. In the present case, appellant was working as a coolie and in and around the date of the accident, the wage of a labourer was between Rs 100 to Rs 150 per day or Rs 4500 per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs 4500 to Rs 3000 per month. We, therefore, accept his statement that his monthly earning was Rs 4500."

There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6500 per month...."

In the present case, PW2 to PW5 had specifically deposed before the Tribunal that the deceased was doing the work of tailoring and sewing of hosiery goods. PW5, the brother of the deceased, who had lodged the FIR has clearly mentioned about the work of the deceased. He had stated that the deceased was carrying on the work of sewing and tailoring of hosiery goods from his house. Respondent No.5 Raghbir Singh, has also admitted in his cross-examination that the deceased was doing the work of sewing and tailoring of hosiery goods. Accordingly, the Tribunal correctly concluded that the deceased was doing such work.

The accident had occurred in May, 2016, therefore, considering the profession of the deceased i.e. tailoring as also the increasing inflation and the statement of the witnesses, I do not find the assessment of the income of the deceased at Rs.12,000/- (About Rs.400/- per day) excessive or exorbitant. Thus, the contention of the Ld. counsel that the Tribunal should have assessed the income as per the minimum wages at Rs.8887.52 fixed by the State of Punjab for skilled labour is devoid of merit.

Ld. Counsel next contended that the amount awarded under the Conventional heads is also not in accordance with the decision of Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 AIR(SC) 5157.**

This submission has merit. As per the **Pranay Sethi's case** (supra), the Tribunal ought to have awarded Rs.70,000/- only under the conventional heads whereas it has awarded Rs.85,000/- (40000+15000+15000+15000) under these heads.

Hence, the appeal is disposed of modifying the impugned award to the extent that the claimants are held entitled to compensation of Rs.25,15,828/-, that is, Rs.15,000/- (2530828-2515828) less than the amount awarded by the Tribunal.

The appeal has been disposed of without notice to the respondents – claimants to avoid unnecessary delay and expense. A copy of this order be conveyed to the claimants-respondents No.1 to 4. In the event of the said respondents having any objection, they may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

May 04, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No