

FAO No. 3421 of 2019 (O&M)

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

FAO No. 3421 of 2019 (O&M)

Date of Decision: May 27, 2019

United India Insurance Co. Ltd.

..... Appellants(s)

Versus

Smt. Champa Devi and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amit Kundra, Advocate
for the appellant.

LISA GILL, J. (oral)

This appeal has been filed by the appellant-insurance company challenging the award dated 03.10.2018, passed by learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') to the extent that income of the deceased has been wrongly assessed at Rs.12,000/- per month.

Respondents no.1 to 6 - claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of Jitender Kumar. Claimants are the widow and four children of the deceased Jitender Kumar, two of them being minor besides a son aged 20 years and an unmarried daughter aged 18 years.

There is no dispute regarding death of Jitender Kumar in the motor vehicle accident, which took place on 31.05.2017, due to the rash and

negligent driving of the offending car bearing registration No. CH-01-AY-9651 by its driver - Sunil Kumar @ Rinku. The offending vehicle was admittedly insured with the appellant-insurance company. There is no challenge to this finding of the learned Tribunal. Learned Tribunal assessed the income of the deceased to be Rs.12,000/- per month and awarded a sum of Rs.16,90,000/-, which is detailed as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income # 12,000 x 12	1,44,000/- per annum
2.	Income after deducting 1/4 th on account of personal and living expenses of the deceased.	1,44,000 – 36,000 = Rs.1,08,000/-
3.	Total dependency after applying a multiplier of 15	1,08,000 x 15 = 16,20,000/-
4.	Loss of consortium to claimant no.1	40,000/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
	Grand Total	Rs.16,90,000/-

I have heard learned counsel for the appellant and have gone through the file with his assistance.

The claimants pleaded the deceased Jitender Kumar to be running a grocery shop as well as a sweet shop in the name and style of Jitender Sweet and Karyana Shop at village Samlehri, Tehsil & District Ambala. It is further claimed that Jitender Kumar was the registered owner of a three-wheeler bearing registration No. HR-37-C-9510 and was earning a sum of Rs.30,000/- per month. His widow Champa Devi deposed as PW1.

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She stated that apart from running the said shops, the three-wheeler was given on a daily rent basis and Jitender Kumar was earning Rs.600 to 700/- per day. Deceased was claimed to be earning Rs.30,000/- per month from all sources. PW-2 Ashop Kumar, Nambardar of village Samlehri has also deposed in this respect. He deposed that the deceased was a shopkeeper by profession and was running his two shops on the main road of the village. PW-2 also deposed regarding ownership of the three-wheeler, which was given on a hire basis. PW-2 deposed that the three-wheeler was hired by Nihaljeet Singh son of Mahi Ram on daily basis. He deposed that after death of Jitender Kumar, shops were closed down. Learned Tribunal observed that there is no documentary evidence on record indicating the exact income of the deceased. Nihaljeet Singh who was claimed to have hired the three-wheeler on a daily basis from Jitender Kumar, was not examined. It is in this situation that monthly income of the deceased was assessed as Rs.12,000/- per month.

Learned counsel for the appellant does not deny that the deceased was indeed owner of the three-wheeler bearing registration No. HR-37-C-9510, as is borne out from Ex. P-8 i.e. the registration certificate (R.C.), duly produced on record. Though, there is no specific evidence on record to prove the exact income of the deceased, it cannot be denied that he was indeed the owner of the three-wheeler, therefore, to assess the income with reference to the minimum wage earned by a un-skilled labourer in the State of Haryana at the relevant time at the rate of Rs.8,280/- per month as urged by learned counsel for the insurance company, is unjustified. It is

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opposed to logic that a person owning a three-wheeler would be earning the minimum wage alone. Therefore, I do not find any ground for reduction in the income of the deceased as assessed by the learned Tribunal in the given facts and circumstances at the instance of the appellant.

There is no illegality, infirmity or perversity in the impugned award dated 03.10.2018, passed by the learned Motor Accidents Claims Tribunal, Chandigarh, which calls for any interference by this Court at the instance of the appellant-insurance company.

No other argument has been addressed.

There is a delay of 126 days in filing of this appeal. As the same has been adjudicated upon on merits, decision on the application for condonation of delay is rendered academic. Application is disposed of accordingly.

Appeal is accordingly dismissed with no order as to costs.

May 27, 2019.

Sunil

**(LISA GILL)
JUDGE**

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