

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

FAO-6840-2016 (O&M)

Date of Decision: 17.12.2019

Bharti AXA General Insurance Company Limited

.....Appellant

Versus

Ashwani Kumar (deceased) through Lrs and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Sanjeev Goyal, Advocate, for the appellant.

Mr. Vinod K. Kanwal, Advocate, for the LR's of
respondents No.1 and 2.

NIRMALJIT KAUR, J. (ORAL)

CM-23795-CII-2016

For the reasons mentioned in the application, the delay of 445
days in filing of the appeal is condoned.

CM stands allowed.

Main appeal

The present appeal is filed against the award dated 14.5.2015
passed by the learned Commissioner under Employees Compensation Act,
1923, Yamuna Nagar (for short, 'the Commissioner').

The only contention raised by learned counsel for the appellant
is that the income of the deceased assessed as 8,000/- per month without
any evidence. In fact, the evidence was to the contrary. The respondent-
claimants themselves had come forward and stated that the salary of
deceased-Vijay Kumar was ₹ 6,000/- per month. In fact, the employer of the
deceased gave affidavit stating the salary of the deceased ₹ 3,500/- per

month. Thus, there is no evidence or reason or any ground mentioned in discussion as to how the income of the deceased was assessed as ₹ 8,000/- per month, even though, the minimum wages at that point of time was ₹ 4,643/- per month.

Learned counsel for the LRs of respondents no.1 and 2 while defending the award submitted that every driver normally gets TA, DA and daily allowances and therefore, income has rightly been assessed by the Commissioner as ₹ 8,000/- per month.

Heard.

The facts as stated by learned counsel for the appellant qua the income and the evidence produced is not disputed. It is also not disputed that there is no reasoning given by the Commissioner while assessing the income of the deceased as ₹ 8,000/- per month. However, the argument that every driver normally gets TA, DA and daily allowances may be correct for Government employee but in the present case, the deceased was a driver of tractor employed privately. Moreover, in the absence of any evidence, it cannot be presumed that he was getting anything towards daily allowances. Although, minimum wages at that point of time was ₹ 4,643/- per month but taking a lenient view, the income of the deceased is assessed as ₹ 6,000/- per month instead of ₹ 8,000/- per month.

No further argument was raised.

The appeal is accordingly partly allowed and the award dated 14.5.2015 is modified by granting total compensation ₹ 6,64,860/- taking the income of the deceased as ₹ 6,000/- per month.

It is pointed out that while passing the interim order this Court

had stayed the compensation amount beyond ₹ 6,64,860/-, which admittedly been deposited by the appellant and the same has also been disbursed to the respondent-claimants. However, the same be disbursed, if not already disbursed.

The excess amount deposited be returned to the appellant on a specific application moved before the concerned Court.

(NIRMALJIT KAUR)
JUDGE

17.12.2019

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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No