IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7010 of 2016 (O&M)
Date of Decision: September 23, 2019

Ram Kumar Prasad and others

...... Appellants

Versus

Surender Tanwar and another

..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.M.K.Sood, Advocate
for the appellants.

Mr. Rajesh Lamba, Advocate
for respondent no.1.

Mr. Punit Jain, Advocate
for respondent no.2-Insurance Company.

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LISA GILL, J.

This appeal has been filed seeking enhancement of compensation awarded to the claimants vide award dated 19.04.2016, passed by learned Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal).

Appellants-claimants no.1 and 2, are the parents of the deceased and appellant-claimant no.3, is the minor sister of the deceased.

As per averments in the claim petition filed under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), on 06.11.2015, Mukesh (deceased) and his brother-Pradeep Kumar, after doing their marketing work, were returning from Sector 10, Market, Faridabad on separate motorcycles. Mukesh was riding motorcycle bearing registration no. HR-29-AF-1385 and going in front of Pradeep Kumar. When Mukesh reached near Shani Dev Mandir, Court Road, Sector-12-Faridabad, a Nissan car bearing registration no. HR-51-AU-2707 being driven by respondent no.1-Surender Tanwar, in a rash and negligent manner struck against the motorcycle of Mukesh. As a result thereof, Mukesh along with his motorcycle, fell on the road and received a head injury. Mukesh was taken to Park Hospital, Faridabad. As the condition of Mukesh deteriorated, he was taken to Safdarjang Hospital, New Delhi, where he succumbed to his injuries on 08.11.2015. FIR No. 700 dated 09.11.2015, under Sections 279 and 304-A IPC, Police Station Sector-7, Faridabad, was registered against respondent no.1-Surender Tanwar, driver of the offending vehicle, in this respect on the statement of Pradeep Kumar. The deceased was claimed to be a distributor of Patanjali Medicines. Compensation was thus claimed.

Learned tribunal on considering the evidence on record concluded that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver-respondent no.1-Surender Tanwar.

Income of the deceased was not accepted to be ₹20,000/- per month as claimed by the claimants, but was assessed to be ₹9400/- per month with reference to the wages of an unskilled labourer as fixed by the

District Collector in the district. Compensation of ₹8,42,500/- was awarded by the learned tribunal, which is detailed as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	₹9400/- per month
2.	Deduction	50%
3.	Total dependency after applying a multiplier of 14	₹4700x12x14 = ₹7,89,600/-
4.	Funeral expenses	₹25,000/-
5.	Medical expenses	₹27,900/-
	Grand Total	**₹8,42,500/-**

Present appeal has been filed seeking enhancement of the aforesaid compensation.

Learned counsel for the appellants vehemently argues that income of the deceased has been wrongly assessed, whereas there is clear and cogent evidence on record to show that the deceased was earning a sum of ₹20,000/- per month. Moreover, increment towards future prospects, has not been awarded and incorrect multiplier has been applied by the learned tribunal. Meagre compensation under the conventional heads has been awarded, which should be enhanced. It is thus prayed that the present appeal be allowed.

Learned counsel for respondent no.3-insurance company refutes the averments raised by learned counsel for the appellants and submits that income of the deceased has already been assessed at a higher rate. It is submitted that minimum wage in the State of Haryana at the time of the accident was ₹7680/- per month and that of a semiskilled labourer ₹7980/- per month, as specified under the Minimum Wages Act, 1948. Learned tribunal, it is contended has erred in assessing income of the deceased with reference to the wages of the unskilled labourer as fixed by the Deputy Collector of the District. It is thus prayed that present appeal be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

There is no dispute regarding death of Mukesh in the motor vehicle accident, which took place on 06.11.2015, due to the rash and negligent driving of the offending car bearing registration No. HR-51-AU-2707, by its driver-Surender Tanwar-respondent no.1. Admittedly, the deceased was 21 years old at the time of the accident. The appellants have claimed the deceased to be earning ₹20,000/- per month being a distributor of Patanjali Medicines. Reliance was placed on the testimony of PW-5-Parsottam Lal, who deposed that the deceased was working in his company for Rs. 350/- per day. Admittedly, no record has been produced by PW-5 to even show that he himself is a registered distributor of Patanjali goods. Deceased had admittedly worked with him for 10 days only. However, it is to be noticed that in the FIR, itself, which was registered on the next day of the death of Pradeep Kumar on 08.11.2015, it is mentioned that deceased was coming back after completing his work in respect to the distribution of Patanjali Medicines. At the same time, it cannot be ignored that there is no clear evidence in respect to the exact income earned by the deceased. In such a situation, learned tribunal has rightly assessed income of the deceased as ₹9400/- per month with reference to the wages of an unskilled labourer fixed by the Deputy Collector of the District.

While deliberating upon the question as to whether assessment of income of the deceased/injured should be on the basis of DC rates or the minimum wage under the Minimum Wages Act, in a situation when specific documentary evidence is not forthcoming, it has been observed by this Court in **FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others) decided on 14.03.2019** as under:-

> "In respect to the DC Rates, it is not in dispute that they are not of a statutory character. DC Rates necessarily vary even within the districts in one particular State. Fixation of such rates are contingent on various factors including the question of availability of a particular kind of labour, worker or a specialised employee in that area. Assessment or fixation of the DC Rates is not necessarily based upon any specific guidelines or criterion which is specifically laid down on a scientific or substantive basis. Said rates are primarily laid down to meet any contingencies while appointing any person on contract basis to work for the government departments. There are no specific or set principles or guidelines for fixation of the DC Rates as specifically provided under the Minimum Wages Act. In the case of DC Rates, it is not in dispute that they have no statutory basis or sanction. Moreover, these rates are dependent upon a number of local factors which necessarily differ from district to district.
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> There is merit in the proposition that in cases where no evidence is brought on record by the claimants to prove the income of the deceased/injured, it is the minimum wages as fixed under the Minimum Wages Act which should be taken as the 'primary' guiding factor while assessing the income for the

purpose of calculation of the compensation to be awarded under the Motor Vehicles Act.

At the same time, it is not possible to hold that in all situations where no documentary evidence is brought on record, it is the minimum wage as fixed under the Minimum Wages Act which alone is to be assessed as the income of the deceased/injured dehors the facts and circumstances of a particular case. Doubtlessly, minimum wage fixed under the Minimum Wages Act provides a sound criterion/guideline and benchmark to assess the income of the deceased/injured in such cases, but at the same time, the tribunal/Court cannot be confined or restricted to the same. It is open to the tribunal/Court to assess the income at a rate which may be higher than the minimum wage so notified keeping in view the evidence on record in that particular case.

It is relevant to note that even if there is no specific documentary evidence to prove the income, but oral evidence led by the claimants inspires confidence and is corroborated by some attending circumstances, it is open to the Court/tribunal to assess income at a rate higher than the minimum wage or assess the same as per DC Rates. There can be no straitjacket or strict criterion laid down in these proceedings under a statute which is admittedly a beneficial piece of legislation. The same necessarily has to vary from case to case depending upon the evidence on record. Needless to say, such assessment at the same time has to be reasonable, logical, based on the evidence on record and not whimsical and arbitrary. The Hon'ble Supreme Court in **Ramachandrappa v. Manager, Royal Sundram Alliance Insurance Company Limited, (2011) 13 SCC 236 held as under:-**

"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 guess work, which may include the ground realities prevailing at the relevant point of time."

The Hon'ble Supreme Court in **Jakir Hussein v. Sabir and others, 2015(2) R.C.R (Civil)141** has held that,

> "the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per the State government notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index."

It has been held in a plethora of judgements by the Hon'ble Supreme Court that it is the duty of the tribunal/Court to award 'just compensation'. Motor Vehicles Act is admittedly a beneficial legislation, therefore to circumscribe the scope of assessment of income of the deceased/injured to the minimum wages as may be notified under the Minimum Wages Act would not be justified. Needless to say, assessment of income in cases where no specific documentary evidence is led in support of the claim, such assessment would be dependent upon the facts and circumstances of each case. There may be instances where oral evidence alongwith other supporting evidence on record may inspire confidence. There has to be a sound evaluation of the oral evidence and supporting circumstances in the factual matrix of each particular case. The Tribunal/Court while keeping in view the minimum wage fixed under the Minimum Wages Act as the basic criterion at the outset would proceed to determine whether income of the deceased/injured is to be assessed at any higher level keeping in view the evidence on record. This in my considered view, would be the correct approach to follow in such cases."

In the present case, the evidence on record as discussed in the foregoing paras does justify the assessment of the income of the deceased to be ₹9400/- p.m., with reference to the rates fixed by the Deputy Collector of the District and not with reference to those fixed under the Minimum Wages Act. At the same time, there is no evidence on record which calls for either enhancement or reduction of the said income, as urged by learned counsel for the appellant and Insurance Company respectively. Therefore, income of the deceased as assessed by the learned tribunal to be ₹9400/- per month, is upheld.

In view of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increment on account of future prospects at the rate of 40% has to be afforded, as the deceased was 21 years old at the time of accident. There is merit in the argument raised by learned counsel for the appellants regarding the multiplier to be applied in this case. The matter regarding application of multiplier while assessing the compensation is no longer res integra. It has been held by the Hon'ble

Supreme Court in **Munna Lal Jain Vs. Vipin Kumar Sharma, (2015) 6 SCC 347** that the multiplier is to be applied as per the age of the deceased. Therefore, multiplier of 18 instead of 14 has to be applied as the deceased was admittedly 21 years old. Deduction of 50% was correctly effected by learned Tribunal.

Instead of ₹25,000/- awarded by learned Tribunal on account of funeral expenses, appellants are entitled to ₹15,000/- towards funeral expenses. Additionally, a sum of ₹15,000/-, towards loss of estate, is awarded to the appellants. Appellants no.1 and 2, are entitled to a sum of ₹40,000/- on account of loss of filial consortium in terms of the judgment of Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018(4) RCR Civil 333**, as well as **decision dated 14.03.2019 of this Court in FAO No.2110 of 2018, titled Shri Ram General Insurance Co. Ltd. Vs. Beant Kaur and others**. Compensation towards medical expenses as awarded by the learned tribunal i.e. ₹27,900/-, is upheld.

Appellants-claimants, are, thus, entitled to compensation which is reworked as under:-

Sr. No.	**Heads of Claim**	**Amount**
1.	Income	₹9400/- p.m.
2.	Income after addition at the rate of 40% on account of future prospects	₹9400 + (9400 x 40%) = ₹13,160/-
3.	Deduction of 50% on account of personal expenses	₹13,160/- (₹13,160*50=₹6580/-) = ₹6580/-
4.	Loss of dependency after applying a multiplier of 18	(₹6580 x 12 x18) = ₹ 14,21,280/-

5.	Loss of estate	₹15,000/-
6.	Funeral expenses	₹15,000/-
7.	Loss of parental consortium to appellants no.1 and 2	₹40,000/-
8.	Medical expenses	₹27,900/-
	Total	**₹15,19,180/-**

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment as well as manner of disbursement amongst the claimants as determined by the learned Tribunal shall remain the same.

Appeal is accordingly disposed of.

September 23, 2019 **(LISA GILL)**
s.khan **JUDGE**

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