IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4790 of 2017 (O&M)
Date of decision : March 14, 2019

Gudiya Tiwari and others .....Appellants

Versus

Rajesh Kumar and another ....Respondents

FAO No. 7243 of 2017 (O&M)

IFFCO TOKIO General Insurance Co. Ltd. .....Appellant

Versus

Gudiya Tiwari and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sagar Aggarwal, Advocate
for the appellants in FAO No.4790 of 2017 and
for the respondents in FAO No.7243 of 2017

Mr. Ravinder Arora, Advocate
for respondent No.2 in FAO No.4790 of 2017 and
for the appellant in FAO No.7243 of 2017.

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LISA GILL, J.

This judgment shall dispose of FAO No. 4790 of 2017 (Gudiya Tiwari and others Versus Rajesh Kumar and another) and FAO No. 7243 of 2017 (IFFCO TOKIO General Insurance Company Limited versus Gudiya Tiwari and others), which arise out of award dated 15.11.2016 passed by the learned Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the 'Tribunal').

FAO No. 4790 of 2017 has been filed by the claimants for enhancement of the compensation awarded by the learned Tribunal on account of death of Chander Parkash vide award dated 15.11.2016.

FAO No. 7243 of 2017 has been filed by IFFCO TOKIO General Insurance Company Limited impugning award dated 15.11.2016.

Brief facts as narrated in the petition under Section 166 of the

Motor Vehicles Act (for short 'the Act') are that the deceased Chander Parkash on 28.01.2016 at about 8.00 p.m. was standing on the footpath near the petrol pump Shahabad. It was averred that the offending car bearing registration No. HR-78-5777 driven by respondent No. 1 in a rash and negligent manner, came from Ambala side at a high speed and hit Chander Parkash after coming on-to the unmetalled part of the road. As a result thereof, Chander Parkash suffered grievous injuries and succumbed to his injuries.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 28.01.2016 due to rash and negligent driving of the offending car bearing registration No. HR78-5777 by respondent No. 1. Learned Tribunal awarded a sum of ₹17,93,800/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹10,200/- per month. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 18 was applied as the deceased was 25 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium, ₹1,00,000/- on account of loss of estate besides a sum of ₹25,000/- on account of funeral expenses and transportation was awarded.

Learned counsel for the insurance company argues that the insurance company has been wrongly held liable to pay the compensation. Accident in question was not proved to have been caused by the offending car as alleged. Furthermore, learned Tribunal has wrongly assessed income of the deceased on the basis of wages fixed by the Deputy Commissioner for person to be employed by the departments in certain contingencies (hereinafter referred to as 'DC rates'). Minimum wages in the State of Haryana at the time of the accident were much lower and at best the same should be taken as a reference point. Moreover, learned Tribunal has awarded an excessive amount of compensation under the conventional heads which is required to be reduced. It is, thus, prayed that the appeal filed by the insurance company be allowed and that of the claimants be dismissed.

Learned counsel for the claimants argues that compensation awarded by the learned Tribunal is meagre and is required to be enhanced. It is submitted that there is sufficient evidence on record to indicate that the deceased was earning an amount higher than what has been assessed by the learned Tribunal. Clear cut evidence on record has been wrongly ignored by the learned Tribunal. It is, thus, prayed that compensation awarded to the claimants be enhanced.

Heard learned counsel for the parties.

As per the averments in the claim petition under Section 166 of the Act, the deceased Chander Parkash on 28.01.2016 at about 8.00 p.m. was standing on the footpath near the petrol pump Shahabad. The offending car bearing registration No. HR-78-5777 is alleged to have come at a high speed in a rash and negligent manner from Ambala side and hit Chander Parkash after coming on-to the unmetalled part of the road. Chander Parkash suffered grievous injuries and died at the spot. Driver of the offending vehicle stopped the offending car for a while and thereafter fled alongwith the vehicle. The accident was witnessed by Madan Lal (PW2). FIR in this respect was registered on 29.01.2016 at the instance of Madan Lal. Madan Lal (PW2) has clearly narrated the events as they unfolded leading to the unfortunate death of Chander Parkash. Registration number of the offending vehicle is clearly mentioned in the FIR itself. There is no question of false implication of the driver or giving of incorrect information regarding the offending vehicle. Respondent – driver was admittedly facing trial in FIR No. 48 (Ex.P4). Certified copy of report under section 173 Cr.P.C. is available on record as Ex.P2. Charge was duly framed against the driver under Sections 279, 304A IPC (Ex.P1).

Reliance by learned counsel for the insurance company on the report of the investigator appended by the insurance company is misplaced. Admittedly, investigator of the insurance company did not step in the witness box to substantiate his investigation to the effect that the respondent - driver recorded a statement to the effect that the accident in fact had taken place with a white coloured car and after being hit by the said car, Chander Parkash was thrown in front of the alleged offending vehicle. RW1 i.e. the driver Rajesh Kumar did not depose that Chander Parkash was thrown in front of his car due to impact of being hit by another car. Presence of the respondent – driver is duly proved on record. It is further not denied that the driver is facing trial in the criminal proceedings. The claimants have indeed proved their case on the touchstone of preponderance of probabilities that the accident in which Chander Parkash lost his life was indeed caused due to rash and negligent driving of the offending car No. HR-78-5777 driven by respondent – Rajesh. The Hon'ble Supreme Court in **Sunita versus Rajasthan State Road Tansport Corportion,** Civil Appeal No. 1665 of 2019 arising out of Special Leave to Appeal (Civil) No. 33757 of 2018 has observed that in such proceedings, culpability must be inferred from the circumstances where reasonable and Court should not succumb to niceties, technicalities and mystic maybes. Thus, in the factual matrix of this case, I do not find any ground to interfere in this finding of the learned Tribunal and the same is upheld.

There is no dispute regarding the age of the deceased Chander Parkash at the time of the accident i.e. 25 years. Claimants have relied upon statement of PW1 Gudiya Tiwari widow of Chander Parkash to claim that Chander Parkash was earning ₹20,000/- per month as salary by working as an Operator at TC Agro Private Limited (Solvent Plant, Ismailabad). Admittedly, there is no other evidence on record to prove that Chander Parkash was serving the said Firm earning the salary as claimed. Educational qualification of the deceased is not proved on record. In this situation, learned Tribunal has rightly treated the deceased to be unskilled labourer. Learned Tribunal has assessed income of the deceased to be ₹10,200/- per month which is the D.C. rate prescribed for an unskilled labourer in the year 2015-16.

While deliberating upon the controversy 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, has been dealt with 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 itself. Relevant paras read 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.

It is further not in dispute that both the States of Punjab and Haryana notified/fixed the minimum rates of wages in respect of scheduled employments. As per notification dated 27th June, 2007 issued by the Labour Department, State of Haryana, it is stated that the minimum rates of wages being fixed/revised are linked with the Haryana State Working Class Consumer Price Index Number (base year 1972-73 = 100) with July, 2007, as the base month. The rate of neutralisation will be Rs.2.31 per point on the rise or fall of the consumer price index number, adjustment in wages shall be made six monthly i.e. Ist January and Ist July, every year after taking into account the average rise or fall in the Haryana State Working Class Consumer Price Index number half yearly ending December and June respectively. Subsequently vide notification dated 14.08.2014, rate of neutralisation in the State of Haryana was Rs.5.50 per point. Similar, notifications are issued by the State of Punjab as well, wherein minimum wages for employees in various sectors are fixed. The said wages are subject to periodic revisions. Minimum wages are admittedly revised/increased periodically taking into account various relevant aspects such as the price inflation etc. Minimum wages so fixed, needless to say, are applicable throughout the State in a uniform manner in the unorganised sector. They are not subject to variation from district to district.

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 appeal, there is no evidence whatsoever on record to indicate the vocation of the deceased at the time of his death or the exact income earned by him. Testimony of PW1 widow of Chander Parkash is bereft of any details in this respect. Admittedly, there is no documentary evidence on record. The oral evidence on record is not sufficiently persuasive to assess income of the deceased with reference to a parameter other than the prescribed wage under the Minimum Wage Act. In the facts and circumstances of the case, it is considered appropriate to assess income of the deceased with reference to the wages fixed under the Minimum Wages Act, applicable in the State of Haryana at the time of the accident. Minimum wage in the State of Haryana at the time of the accident as on 28.01.2016 was ₹7976.20 per month. Income of the deceased is, thus, assessed as ₹8,000/- instead of ₹10,200/- per month. 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**, increase on account of future prospects at the rate of 40% (₹3200/-) has to be afforded, as the deceased was 25 years old at the time of accident, which takes income of the deceased to ₹11,200/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of 1/3rd has been correctly applied as number of dependants is three (3), thereby rendering income of the deceased to be

₹7467/-(11200-3733). Applying a multiplier of 18, dependancy of the claimants is, therefore, assessed as ₹16,12,872/- (₹7467x12x18). The claimants are also entitled to ₹15,000/- each (instead of ₹25,000/-)for funeral expenses and loss of estate besides the claimant widow is entitled to ₹40,000/- instead of ₹1,00,000/- on account of loss of consortium. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018) and decision dated 14.03.2019 of this Court in FAO No. 2011 of 2016, appellants No. 1 and 2 i.e. parents of the deceased are entitled to ₹40,000/- on account of loss of filial consortium. Claimants are, thus, entitled to total compensation of ₹17,22,872/- instead of ₹17,93,800/- which is detailed as hereunder:-

Loss of dependency (₹7467x12x18)	₹16,12,872/-
Loss of spousal consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹17,22,872/-

Rate of interest as awarded by the learned Tribunal is maintained.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

FAO No. 4790 of 2017 filed by the claimants is dismissed and FAO No. 7243 of 2017 filed by the insurance company is partly allowed.

(Lisa Gill)
Judge

March 14, 2019
rts

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