

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

FAO-2448-2018(O&M)

Date of decision:-4.2.2019

The Oriental Insurance Co.Ltd.

...Appellant

Versus

Smt.Anju Yadav and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.S. Sidhu, Advocate
for the appellant.

Mr.S.K. Yadav, Advocate
for respondents No.1 to 4.

H.S. MADAAN, J.

On account of death of Lalit Kumar, aged about 25 years stated to be working as Sales Manager at Yaduvanshi Motors, Rewari Road, Narnaul with its Head Office at Rewari, getting monthly salary of Rs.15,000/- per month, in a road side accident, which took place on 13.11.2016 at about 8:30 p.m. in the area of village Nangal Sirohi, Police Station Mohindergarh, allegedly due to rash and negligent driving of WAGON R car bearing registration No.HR-35-K-8459 (hereinafter referred to as the offending vehicle) by its driver Omparkash – respondent No.1, legal representatives of Lalit Kumar – deceased including his wife Smt.Anju Yadav, minor daughter – Ms.Himanshu, mother – Smt.Bimla Devi and father – Sh.Manphool Singh, had brought a claim petition under

Section 166 of the Motor Vehicles Act, claiming compensation to the tune of Rs.80 lacs. In the said claim petition, they impleaded Omparkash – driver, Raj Kumar – owner and Oriental Insurance Company Ltd., New Delhi – insurer of the offending vehicle as respondents. That claim petition was contested by all the three respondents.

Vide Award dated 12.2.2018, learned Motor Accidents Claims Tribunal, Narnaul allowed the claim petition and awarded compensation of Rs.30,68,800/- with interest and cost to the claimants.

The respondent No.3 – insurance company felt aggrieved by the said Award and has approached this Court by way of filing an appeal praying that the Award in question be modified since the monthly income of the deceased has been taken to be on higher side and future prospects have been wrongly awarded and deduction to the extent of 1/4th towards personal expenses has been wrongly made instead of 1/3rd.

Notice of the appeal was issued to the respondents, who were served and put in appearance. Subsequently, there was no representation on behalf of respondents No.5 and 6.

I have heard learned counsel for the appellant – insurance company and learned counsel for respondents No.1 to 4 besides going through the record.

Learned counsel for the appellant has argued that the claimants could not establish on record that the deceased was working as Sales Manager with Yaduvanshi Motors, Rewari Road, Narnaul getting salary of Rs.15,000/- per month since they had failed to summon any record from that institution and prove it as per law but even then the

Tribunal fell in error in taking income of the deceased to be Rs.14,000/- per month, which was on the higher side; that as a matter of fact the income of the deceased should have been assessed in terms of the notification issued by Labour Commissioner, Haryana on 21.10.2016 as per which wages for highly skilled/qualified person were Rs.10,300.14 per month.

Learned counsel for the appellant has further contended that the Apex Court in a case **Govind Yadav Versus The New India Assurance Co. Ltd. 2011(4) RCR(Civil) 817** has observed that where the monthly income is not proved, in such a case compensation be assessed on the basis of minimum wages payable to a worker at the relevant time.

On the other hand, learned counsel for the respondents No.1 to 4 has controverted such argument of learned counsel for the appellant contending that it was specific case of the claimants that the deceased was working as Sales Manager at Yaduvanshi Motors, Rewari Road, Narnaul having its Head Office at Rewari and was getting monthly salary of Rs.15,000/- plus perks; that in addition to that in a spare time, the deceased also used to do agricultural and dairy farming work and earning Rs.15,000/- per month by those avocations, in that way, his total income was Rs.30,000/-; that the deceased had passed MBA from MDU, Rohtak and had a bright future; that he was likely to get Government job and his income was likely to increase; that he was sole bread earner in the family and the petitioners/claimants were dependent upon him. He further contended that the petitioner/claimant Anju Yadav wife of the deceased had got her statement recorded as PW1 and categorically deposed in that

regard, as such though the Tribunal did not believe such assertions of the petitioners/claimants but observing that from the perusal of documents Ex.P12 to Ex.P19, it came out that the deceased had passed Bachelor of Art from Maharshi Dayanand University, Rohtak in the year 2009 and had also obtained degree of Master of Business Administration (Two years) from Maharshi Dayanand University, Rohtak in the year 2012 besides successfully completing course on Operation System Fundamentals, MS Office, Networking Concepts and C Programming Language at Government Sr.Sec.School, Nangal Sirohi, Mohindergarh from April 2004 to March, 2005 with very good grades, besides passing the prescribed test in trade of Stenography – Hindi and obtained training from August, 2007 to July, 2008, it could be presumed that his future was very bright and his earnings would not have been less than Rs.14,000/- per month, has assessed his income as such. Therefore, income can certainly be not taken on the higher side.

After hearing learned counsel for the parties and going through the record, I find that the Tribunal was justified in taking monthly income of the deceased to be Rs.14,000/- per month considering his educational qualifications and trainings etc. received by him. His earnings would definitely have been more than skilled labourer and keeping in view the facts and circumstances of the case and evidence available on record led by the claimants, there is no reason to reduce the income of deceased from Rs.14,000/- per month to Rs.10,300/- per month as in case of skilled/qualified worker as per notification issued by Labour Commissioner, Haryana, referred to above.

Learned counsel for the respondents has referred to authority **S.Saraswathy and another Versus A.Elumalai and another, 2017 ACJ 1036** by a Division Bench of Madras High Court where while considering grant of compensation to parents of a victim of a road side accident, when the victim was a engineering student, who had lost his life in a motor vehicular accident, it was observed that average monthly salary of a fresh engineering graduate would certainly be in the region of Rs.20,000/-, as such notional monthly income of the deceased was taken to be Rs.20,000/- per month instead of Rs.7,500/- per month fixed by the Tribunal.

In the next authority pressed into service by learned counsel for the respondents i.e. **Divisional Manager, National Insurance Co. Ltd., Gulbarga Versus Laxmi Bai & Others, 2015(69) RCR(Civil) 861** by Division Bench of Karnataka High Court when the deceased was pursuing stream in engineering in Electronics and Communication and had successfully completed four semesters, his income was assessed at Rs.18,000/- on notional basis.

In the third authority i.e. **Chief Works Manager, Southern Railway Carriage Works Versus V.Manimekalai, 2015(88) RCR(Civil)653** while determining income of a victim of a road side accident, it was observed that 'Education' should be given due respect. Considering the academic record and pursuit of the deceased to achieve a Doctorate Degree in Mechanical Engineering at young age, his income was fixed at Rs.20,000/- per month.

I find that the Tribunal was justified in taking monthly

income of the deceased to be Rs.14,000/- per month and no interference therewith is called for.

As regards the other contention with regard to deducting 1/4th of the monthly income towards personal expenses instead of 1/3rd, that point was not pressed by learned counsel for the appellant during arguments. However, considering the number of petitioners/claimants in the claim petition to be four, who claimed to be dependent upon earnings of the deceased, the Tribunal had correctly deducted 1/4th of the amount towards personal expenses, in terms of the ratio of authority *Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77.*

No other argument was advanced.

I do not find any illegality of infirmity in the award passed by the Tribunal. Rather the same is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Thus, the appeal stands dismissed.

4.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No