IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4021-2018 (O&M)
Date of Decision: September 12, 2019

Cholamandlam MS General Insurance Company Ltd.
...... Appellants(s)

Versus

Pritam Devi and others ..... Respondent(s)

with

FAO- 6176-2018 (O&M)

Pritam Devi and others ...... Appellants(s)

Versus

Shiv Kumar and others ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Punit Jain, Advocate
for the appellant in FAO-4021-2018 and
for respondent no.3 in FAO-6176-2018.

Mr. R.C. Gupta, Advocate
for the appellants in FAO-6176-2018 and
for respondents no.1 to 6 in FAO-4021-2018.

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<u>LISA GILL, J.</u>

This judgment shall dispose of FAO-4021-2018 (Cholamandlam MS General Insurance Company Ltd. Vs. Pritam Devi and others) as well as FAO-6176-2018 (Pritam Devi and others Vs. Shiv Kumar and others) as both the above noted appeals arise out of award dated 23.03.2018, passed by the learned Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'the Tribunal).

FAO-6176-2018 was directed to be listed today itself along with FAO-4021-2018, filed by the insurance company. Formal notice in the application for condonation of delay in filing of the appeal as well as notice of motion in this appeal (FAO-6176-2018) is issued.

Mr. Punit Jain, Advocate accepts notice on behalf of respondent no.3-insurance company. Copy of application as well as the appeal has been handed over to him.

Learned counsel for the parties are *ad idem* that liability of the insurance company is not in dispute, therefore, service of respondent nos.1 and 2 (in FAO-6176-2018) may be dispensed with at this stage.

Ordered accordingly.

CM-21590-CII-2018 in FAO-6176-2018

There is a delay of 32 days in filing of the said appeal.

For the reasons mentioned in the application, duly supported by an affidavit of the applicant, as well as arguments addressed, delay of 32 days in filing of the appeal is condoned.

Application is disposed of.

<u>MAIN APPEALS</u>

Both the appeals have been filed challenging the quantum of compensation awarded by the learned Tribunal. The insurance company seeks a reduction of the said compensation whereas the claimants seek an enhancement thereof.

Claimants who are the appellants in FAO-6176-2018, preferred a petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of Naib Kumar. Claim petition was filed by the wife, four children and mother of the deceased. It is pleaded in the claim petition that on the intervening night of 26/27.04.2015, Naib Kumar (since deceased) was travelling on a motorcycle bearing registration No. HR-01-W-9874 from village Saha to village Kalsana, District Kurukshetra. He was followed by Pritam Singh and Manjit Singh on their separate motorcycle. At about 12:10 A.M., after crossing Galaxy Global College, Dinarpur, when they were on their way towards Saha, a Swaraj Mazda vehicle bearing registration No. HR-37-C-6163, driven by respondent - Shiv Kumar rashly, negligently, in a zigzag manner, without blowing its horn and without using a dipper, came from the side of village Landa i.e. right side of the ill-fated motorcycle and came on to the main road, without caring for the motorcycle plying on the road. The driver did not slow down at all and while coming on to the wrong side of the road, struck against the motorcycle driven by Naib Kumar, upon which Naib Kumar suffered multiple injuries. Injured was taken to Civil Hospital, Ambala, where he was declared brought dead. FIR No. 45 dated 27.04.2015 under Sections 279, 304-A of IPC was registered at Police Station Saha, in this regard. The deceased was claimed to be working as carpenter by vocation, earning Rs.24,000/- per month.

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 i.e. Swaraj Mazda bearing registration No. HR-37-C-6163, by its driver respondent- Shiv Kumar. Learned Tribunal proceeded to assess income of the deceased to be

Rs.9,320/- per month while treating the deceased to be an unskilled labourer with reference to notification dated 05.05.2015, issued by the Deputy Commissioner, Panchkula, in respect to the minimum wages for an unskilled labourer in the said district. Learned Tribunal awarded a sum of Rs.20,29,344/- as compensation to the claimants, which is detailed as under:-

Sr. No.	**Heads**	**Calculations**
1.	Income	9,320/- per month
2.	Income after deducting 1/4th as personal and living expenses of the deceased	9,320 – 1/4th = 6,990/- per month
3.	Income after addition at the rate of 40% on account of future prospects	6,990 + 2796 (6,990 x 40%) = Rs.9,786/- p.m.
4.	Dependency after applying multiplier of 17	9,786 x 12 x 17 = 19,96,344/-
5	Loss of love and affection, funeral and last rites expenses etc.	33,000/-
	Total	**Rs. 20,29,344/-**

Learned counsel for the insurance company vehemently argues that income of the deceased while treating him to be an unskilled labourer, has been wrongly assessed as Rs.9,320/- per month, keeping in view the fact that the minimum wages in the State of Haryana at the time of the accident was Rs. 5,812/- per month. Therefore, the compensation awarded to the claimants be reduced accordingly.

Learned counsel for the claimants, per contra, submits that there is categoric evidence on record to show that the deceased was a skilled carpenter. Therefore, income as assessed by the learned Tribunal should be enhanced. Moreover, compensation under the conventional heads is meagre and the same should also be enhanced. It is, thus, prayed that the appeal filed by the insurance company be dismissed and that of the claimants be allowed and compensation be enhanced.

I have heard learned counsel for the parties and have gone through the photocopy of the record produced today by them.

It is to be noted at this stage that notice of motion was issued in the appeal filed by the insurance company on the sole ground as to whether income of the deceased has been rightly assessed with reference to the rates of wages fixed by the Deputy Commissioner of the district instead of the minimum wages fixed in the State under the provisions of Minimum Wages Act.

There is thus no dispute regarding death of Naib Kumar in the motor vehicle accident, which took place on the intervening night of 26/27.04.2015, due to the rash and negligent driving of the offending Swaraj Mazda bearing registration No. HR-37-C-6163, by its driver Shiv Kumar - respondent. Liability of the insurance company is also not under challenge. Claimants in order to substantiate their claim that the deceased was a carpenter, have examined PW-3 Suresh Kumar, Ex-Sarpanch of the village. He has deposed that the deceased was a carpenter who had learnt the work of carpenter from one Pawan Kumar 8 years prior to the accident. PW-3 stated that the deceased had done some work for him at his residence in year 2014. PW-1 Pritam Devi, wife of the deceased has also deposed regarding the deceased being a carpenter. However, it is a matter of record that there is no categoric evidence on record to prove the exact income of the deceased. It is further not in dispute that the minimum wage of a skilled labourer in the State of Haryana at the relevant time was Rs.6,462/- per month. Learned Tribunal has assessed income of the deceased to be Rs.9,320/- per month on the basis of the D.C. rates prevailing at the time of the accident. While discussing the question, whether it is the minimum wage alone which should be the criterion to assess the income of the deceased, it has been observed by this Court in FAO No. 2110 of 2016, title as ***Shri Ram General Insurance Company Ltd. Vs. Beant Kaur and others*** that:-

> *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.*
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> *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 does not justify assessment of the income of the deceased to be Rs.9,320/- per month on the basis of D.C. rates. However, the evidence on record does indicate that the deceased was a carpenter by vocation. There is further no evidence to discredit the plea that he had learnt the skill about 8 – 9 years prior to his death. Therefore, income has to be assessed while treating the deceased to be a skilled worker. In this view of the matter, I deem it just and expedient to assess the income of the deceased to be Rs.7,000/- per month instead of Rs.9,320/- per month. 40% increment towards future prospects was correctly awarded by learned Tribunal. Deduction of 1/4th was correctly effected by learned Tribunal. As the deceased was admittedly 27 years old at the time of the accident, multiplier of 17 was correctly applied by learned Tribunal. Instead of a consolidated sum of Rs.33,000/- awarded by the learned Tribunal towards loss of love and affection, funeral expenses etc., the claimants are entitled to a sum of Rs.15,000/- each on account of funeral expenses and loss of estate. Claimant - widow is entitled to a sum of Rs.40,000/- towards loss of filial consortium. Children of the deceased are also entitled to a consolidated sum of Rs. 40,000/- towards loss of parental consortium. Mother of the deceased is entitled to a sum of Rs. 40,000/- towards loss of filial consortium. Reference in this regard can gainfully be made to the judgment of the 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-2110-2016.

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

Sr.No.	***Heads of Claim***	***Amount***
1.	Income # 7,000 x 12	84,000/- per annum

2.	Income after 1/4th deduction on account of personal and living expenses.	84,000 – 21,000 (84,000 x 1/4th) = 63,000/-
3.	Total income after addition at the rate of 40% on account of future prospects	63,000 + **25**,200 (63,000 **x** 40%) = 88,200/-
4.	Total dependency after applying a multiplier of 17	88,200 **x** 17 = 14,99,400/-
5.	Funeral expenses	15,000/-
6.	Loss of estate	15,000/-
7.	Loss of consortium to widow of the deceased	40,000/-
8.	Loss of consortium to the children of the deceased	40,000/-
9.	Loss of consortium to mother of the deceased	40,000/-
	Grand Total	**Rs. 16,49,400/-**

Claimants shall be entitled to interest at the rate of 7.5% per annum (instead of 6% per annum as awarded by the learned Tribunal) on the entire amount, from the date of filing of the claim petition till realization. Ratio of apportionment as well as manner of disbursement of compensation amongst the claimants as determined by the learned Tribunal shall remain the same.

In view of the discussion as above, both the appeals are disposed of.

September 12, 2019.
Sunil

(LISA GILL)
JUDGE

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