IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 4834 of 2017(O&M)
Date of Decision: 19.11.2019

Iffco Tokio General Insurance Company Limited

......Appellant.

Versus

Bimla Devi and others

...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Ajay Singla, Advocate
for the appellant.

Mr. J.S.Saneta, Advocate
for resondents no.1 to 3.

Mr. S.Murli Manoharam, Advocate
for respondent no.4.

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LISA GILL, J.

This appeal has been filed by the appellant-Insurance Company, challenging quantum of compensation awarded to the respondents-claimants by the learned Motor Accident Claims Tribunal, Karnal (for short 'tribunal'), vide impugned award dated 21.02.2017.

As per averments in the claim petition filed under Section 166 of the Motor Vehicles Act (for short 'M.V.Act'), Jasbir Singh (deceased) on 07.09.2015, along with Om Parkash, was going from Gharaunda to village Panori, on separate motorcycles. Jasbir Singh (deceased) was driving his motorcycle bearing registration no. HR-06-V-3340. At about 1.00.p.m., when he reached near the Dera of one Jagpal situated at Panori road, a motorcycle bearing temporary no. HR-99-TV-TP-7073, being driven by respondent no.1 in a rash and negligent manner struck against the motorcycle of Jasbir Singh (deceased). As a result thereof, Jasbir Singh fell on the road and received multiple injuries on vital parts of his body. Om Parkash, informed the family members of the deceased and shifted him to Civil Hospital, Karnal, where he was declared brought dead. Postmortem on the dead body of the deceased was conducted at General Hospital, Karnal. FIR No. 491, under Sections 279 and 304-A IPC, was registered, against respondent no.1-Sudhir Ram, in this respect. Compensation was thus claimed.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Sudhir Ram. Said finding of the learned tribunal has not been challenged by the Insurance Company. Liability of the insurance company is also not in dispute.

Learned tribunal while discarding the plea of the deceased to be earning a sum of ₹20,000/- per month by working as a tractor driver in the fields of the landlords, besides running a milk dairy, assessed his income to be ₹9560/- and awarded a sum of ₹18,17,034/-, which is detailed as under:-

1.	Total income of deceased	₹9560/- p.m.
2.	Future prospects	30%
3.	Deduction	1/ 3rd
4.	Multiplier	14
5.	Loss of dependency	₹13,92,034/-
6.	Loss of consortium	₹1,00,000/-
7.	Loss of funeral and transportation etc.	₹25,000/-
8.	Love and affection	₹3,00,000/-
	Total	**₹18,17,034/-**

Aggrieved therefrom, the present appeal has been filed by the appellant-Insurance Company.

Learned counsel for the appellant-Insurance Company argues that income of the deceased has been wrongly assessed as Rs.9560/- per month with reference to the minimum wage as per the Deputy Collector (D.C.) rates available in District Karnal at the time of the accident. It is submitted that minimum wage under the payment of Wages Act, should have been referred to for assessing the income of the deceased, which was about ₹6000/- per month, at the relevant time. It is further contended that in terms of the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R. (Civil) 1009** increment at the rate of 30% has been wrongly afforded and compensation under the conventional heads, is excessive, as well. It is thus prayed that the present appeal be allowed.

Learned counsel for the respondents-claimants refutes the abovesaid arguments and submits that just and reasonable compensation has been awarded by the learned tribunal, which calls for no reduction. It is thus prayed that the present appeal be dismissed and the compensation awarded by the learned tribunal be upheld.

I have perused the file and heard learned counsel for the parties.

The claimants have pleaded the deceased-Jasbir Singh to be a tractor driver, ploughing the fields of other landlords, besides running a milk dairy, thus earning a sum of ₹20,000/- per month. There is no documentary evidence on record to indicate the exact income earned by the deceased-Jasbir Singh. In respect to whether the Court is to assess income of the deceased with reference to minimum wages under the payment of Wages Act or other parameters like D.C rates available in the District, this Court in **FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others) decided on 14.03.2019 observed as under:-**

> "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.
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> 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, widow of the deceased, PW-1 has clearly deposed that he was earning his livelihood by working as a tractor driver for ploughing the fields of other farmers, besides cultivating land, taken on lease and running a dairy. The deceased was looking after his dependant wife, two minor children. PW-1 has truthfully deposed that her mother-in-law was living with the other son and her father-in-law had expired a number of years ago. The parents are not claimants in the petition. Therefore, even if there is no documentary evidence to prove the exact income of the deceased, I do not find any ground whatsoever to reduce the income of the deceased as assessed by the learned tribunal to be ₹9560/-. Income of the deceased is thus maintained at the said rate.

However, in terms of the judgement of the Hon'ble Supreme

Court in **Pranay Sethi's** case (Supra), it is an increment of 25% towards future prospects, which has to be awarded instead of 30% to the claimants . Deduction of 1/3rd is correctly applied by the learned tribunal. Multiplier of 14 has also been correctly applied by the learned tribunal. Claimants are entitled to a sum of ₹15,000/- towards funeral expenses instead of ₹25,000/-, besides ₹15,000/- towards loss of estate. Claimant-widow, is entitled to a sum of ₹40,000/- instead of ₹1,00,000/- towards loss of consortium. Children of the deceased are not entitled to a sum of ₹3,00,000/- towards loss of love and affection. They are entitled to a sum of ₹40,000/- towards loss of parental consortium in terms of the judgement 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**.

Claimants-respondents, are, thus, entitled to compensation of ₹14,48,456/- instead of ₹18,17,034/- which is reworked as under:-

Sr. No.	**Heads of Claim**	**Amount**
1.	Income	₹9560/- p.m.
2.	Loss of income after addition at the rate of 25% on account of future prospects	₹9560 + (9560 x 25%) = ₹11,950/-
3.	Deduction of 1/3rd on account of personal expenses	₹11,950 – (11950x 1/3) = ₹7967/-
4.	Loss of dependency after applying a multiplier of 14	(₹7967 x12 x 14) = ₹ 13,38,456/-
5.	Loss of estate	₹15,000/-
6.	Funeral expenses	₹15,000/-
7.	Consortium to widow of the deceased	₹40,000/-
8.	Parental consortium to	₹40,000/-

	respondents no.2 and 3	
	Total	**₹14,48,456/-**

Ratio of apportionment and rate of interest as awarded by the learned tribunal, is maintained.

With the abovesaid modification in the amount of compensation, present appeal is disposed of.

[LISA GILL]
Judge

19.11.2019
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.