

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

(Proceedings conducted through video Conference)

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FAO-2714-2020 (O&M)

Date of decision: 09.09.2020

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD. ..Appellant

Versus

SUDESH AND OTHERS

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Swati Batra, Advocate for the appellant.

Mr. Chetan Kapoor, Advocate for respondents No.1 to 3.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 12.03.2020 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed in regard to death of Vishal, in a motor vehicular accident that took place on 12.09.2016 though the victim succumbed to injuries on 13.09.2016.

Counsel for the appellant would inform that appeal has been filed to assail only quantum of compensation particularly assessment of income of the deceased @ Rs.12,000/- per month. It is argued that though the claimants raised a plea that deceased was working as mason thereby earning Rs.18,000/- per month but they failed to adduce sufficient much less cogent and convincing evidence to prove avocation and income of the deceased. It is further argued that if the deceased is treated as unskilled labour, his income is liable to be assessed on the basis of notification issued by the State of Haryana fixing minimum wage at the relevant time.

Counsel representing respondents No.1 to 3, on the contrary, has supported the award with regard to assessment of income of the deceased at Rs.12,000/- per month. He would pray that claimants may be extended benefit of filial consortium @ Rs.40,000/- each to parents of the deceased. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333.**

Counsel for the appellant, in reply, would argue that claimants are not entitle to filial consortium, in view of decision by Hon'ble the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and decision by a three Judge Bench in

Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034 subsequent to decision in **Magma General Insurance Co. Ltd.'s case (supra)**.

Be that as it may, plea of respondents/claimants is that deceased was working as mason thereby earning Rs.18,000/- per month. The Tribunal assessed income of the deceased at Rs.12,000/- per month by referring to judgment of Hon'ble the Supreme Court **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315**. Even though the Tribunal has observed that deceased is to be treated on parameters as unskilled labour but did not bother to examine notification issued by the State of Haryana fixing minimum wage of various categories of labour including unskilled. In absence of claimants adducing sufficient evidence with regard to avocation and income of the deceased, there is no alternative except to take a clue from notification issued by the concerned State Government with regard to fixing of minimum wages. Taking into consideration the notification dated 21.10.2016 issued by the Government of Haryana, Department of Labour, income of the deceased is liable to be assessed at Rs.8200/- per month and ordered accordingly. After assessing income @ Rs.8200/- per month and applying other criteria rightly adopted by the Tribunal, loss of dependency is calculated at Rs.12,39,840/- [(8200 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Compensation allowed by the Tribunal with regard to loss of estate and funeral expenses is affirmed. The claimants are not entitle to any additional compensation under conventional heads when the case is examined in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others's case (supra)** and **Sebastiani Lakra and others's case (supra)**. As a result, compensation assessed by the Tribunal is reduced to the extent of Rs.5,74,560/- (18,44,400 – 12,69,840).

For the foregoing reasons, the appeal is partly allowed.

09.09.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No