

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

FAO-2990-2020 (O&M)
Date of decision : 08.12.2020

IFFCO-TOKIO General Insurance Company Limited

...Appellant

Versus

Lalita Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Ms. Malvita Singh, Advocate for
Ms. Mehak Sawhney, Advocate for the appellant.

ANIL KSHETARPAL, J.

The Insurance Company has filed an appeal assailing the award passed on 06.01.2020, by the Presiding Officer, Motor Accident Claims Tribunal, Karnal (hereinafter to be referred as “The Tribunal”), allowing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, while awarding compensation of Rs.23,38,000/-, on account of death of Shambhu Shah, in a motor accident.

At the outset, it must be noticed that the learned counsel, for the appellant, has not challenged the findings of the Tribunal with regard to involvement of the vehicle and rash and negligent driving of Ajay Kumar-respondent No.7.

The only argument addressed by learned counsel, for the appellant, is that the Tribunal has erred in assessing the income of the

deceased at Rs.12,000/-, per month. She contended that since no convincing evidence was produced, therefore, the Tribunal was bound to assess the income at the minimum wage, notified by the Labour Commissioner, Haryana, which at the relevant time was Rs.7,600/-. Hence, she contended that the Tribunal has committed an error in assessing the income at Rs.12,000/- per month. She places reliance on the following judgments:-

- 1) Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram, 2018(4) RCR (Civil) 333,
- 2) Govind Yadav Vs. New India Insurance Company Limited, 2011(10) SCC 683,
- 3) The Oriental Insurance Company Limited Vs. Vijma and others, FAO-2421-2018,
- 4) The New India Assurance Company Limited Vs. Ms. Sheela Devi and others, FAO-2426-2018,
- 5) National Insurance Company Limited Vs. Jameet Ram and another, FAO-2377-2017,
- 6) Oriental Insurance Company Limited Vs. Sona Devi, 2018(3) PLR 104,
- 7) Reliance General Insurance Company Limited Vs. Sohna Ram and others, FAO-4269-2015,

At this stage, it would be appropriate to notice that Shambhu Shah, aged about 39 years had died in a motor accident. He left behind a widow, three children and aged parents. In total, he left behind 6 dependents. It is the case of the claimants that Late Sh. Shambhu Shah was earning Rs.20,000/- per month while working as a Labour Contractor. No doubt, no

documentary evidence, in support thereof, was produced, however, Chandan, the deceased's son and Mangal Shah, the deceased's brother have appeared in evidence and stated that the deceased was working as Labour Contractor. Keeping in view the evidence produced, the Court assessed the income at Rs.12,000/-, per month, by placing reliance on a judgment of the Supreme Court, in Munna Lal Jain and another Vs. Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447.

In the considered view of this Court, this case is not a case of no evidence. No doubt, no documentary evidence has been produced, however, in absence of documentary evidence, oral evidence, if found worthy of reliance, can be relied upon. In an unorganized sector, some time, no documentary evidence is available. Hence the court has to evaluate the evidence, depending upon the quality of evidence produced by the parties. The accident, in the present case, took place on 21.09.2018. The deceased was 39 years old. He otherwise belonged to Bihar but had come to the area of Karnal (The State of Haryana), for earning his livelihood.

Keeping in view the aforesaid facts, the Tribunal has assessed the income as noticed above. No doubt, the notification, issued regarding linking of minimum wages with Consumer Price Index, is relevant, however, that is not binding, as such, on the Tribunal. Still further, even in the case of Magma (Supra), the Supreme Court even after noticing that the minimum wages notified was Rs.5341/- and the Courts had assessed the income at Rs.6000/-, did not chose to interfere in the income assessed. Similarly, in other cases relied upon by learned counsel, for the appellant, referred to above, the Courts have held that for determining the income of

an unskilled laborer, a clue, from the notification issued by the Government, can be taken while assessing the income. However, in none of the judgment, it has been laid down that the Tribunal has no jurisdiction to go beyond the notification.

Still further, in the present case, the claimants have claimed that the deceased was working as Labour Contractor. He cannot be equated with an unskilled labourer, as is being contended by learned counsel for the appellant. Further, the Tribunal, on appreciation of evidence, has arrived at a finding. This Court in absence of evidence to the contrary, does not find it appropriate to interfere.

Hence, no ground to interfere.

Accordingly, the present appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

08.12.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No