

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

FAO-475-2021 (O&M)

Date of decision: 03.08.2021

The New India Assurance Company Limited

....Appellant

Versus

Payal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.R.C.Gupta, Advocate for the appellant

Mr. Sumit Gupta, Advocate for the caveator

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The insurer assails the correctness of the award passed by the Motor Accident Claims Tribunal, Karnal, (hereinafter referred to as the 'Tribunal') while allowing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988. The claimants-respondents preferred the petition on account of death of late Sh.Kushal Kant in an automobile accident, which occurred on 30.01.2019.

Learned Tribunal has assessed the compensation at Rs.23,62,480/-.

Learned counsel representing the appellant does not dispute the correctness of finding of fact arrived at by the Tribunal with regard to rash and negligent driving of the offending vehicle by respondent no.5. However, he submits that the Tribunal has erred in ignoring the

notification issued fixing the minimum wages. He submits that the court has further erred in taking the average of the minimum wages notified under the Minimum Wages Act, 1948, as well as the minimum wages fixed by the Deputy Commissioner of the District.

This Bench has considered the arguments of the learned counsel for the appellant and with his able assistance perused the paper book. It is apparent that late Sh. Kushal Kant, aged about 34 years had met with an unfortunate end on account of an automobile accident. He has left behind a widow, an aged mother and two minor children. The claimants had pleaded that Sh. Kushal Kant used to work as a mason in the construction sector. However, since the claimants failed to produce any documentary evidence, the Tribunal considered it appropriate to take the average of minimum wages fixed under the Minimum Wages Act, 1948, by the Labour Commissioner and the Deputy Commissioner.

In '**Jakir Hussein vs. Sabir and others**' (2015) 7 SCC 252, Hon'ble Supreme Court after considering all aspects of the matter has held that it is for the Tribunal to assess the income of the deceased and it is not bound by the notification notifying the minimum wages under the Minimum Wages Act, 1948. It was further held that the minimum wages notified under the 1948 Act is a good yardstick, however, they cannot be treated as an absolute factor to be taken to determine the compensation.

The accident in question occurred on 30.01.2019 and the Tribunal has assessed the income of the deceased at Rs.11,370/- per month. The deceased alongwith his family was residing in Karnal.

Keeping in view the aforesaid facts, no ground to interfere with the compensation assessed is made out. Hence, dismissed.

The amount of Rs.25,000/- deposited in this Court while filing the appeal be remitted to the Tribunal for onward disbursal.

All the pending miscellaneous applications, if any, are also disposed of.

03.08.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE