

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

FAO-602-2021 (O&M)

Date of decision: 20.07.2021

Iffco Tokio General Ins. Co. Ltd.

... Appellant

Versus

Khatija and ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Ankur Gupta, Advocate for the appellant.

ANIL KSHETARPAL, J.

1. The insurer has filed this appeal assailing the correctness of the award passed on 05.03.2021 by the Motor Accidents Claims Tribunal, Mewat, (in short 'the Tribunal') while directing it to pay compensation of Rs.19,39,520/- along with interest @ 7% per annum from the date of institution of the claim petition till the realisation on account of death of late Sh. Alimaged aged about 22 years on 30.06.2018 in a motor vehicular accident.

2. The claimants are aged parents of the deceased as he was a bachelor.

Heard learned counsel for the appellant at length and with his able assistance, perused the paper book.

3. The learned counsel representing the appellant contends that the accident took place within the territory of the State of Rajasthan whereas

in order to get higher compensation the claim has been filed in Mewat (State of Haryana). He further contends that instead of the minimum wages notified under the Minimum Wages Act, 1948 (in short 'the 1948 Act) by the State Government, the Court has wrongly relied upon the circular issued by the Deputy Commissioner of the district notifying the DC rates payable to daily wagers. He, in support thereof, relies upon the judgment passed in **Shri Ram General Ins. Co. Ltd. and ors. vs. Beant Kaur and others, FAO No.2110 of 2016, decided on 14.03.2019.**

4. At the outset, it must be noticed that the insurer has not assailed the correctness of the finding arrived at by the Tribunal with regard to the cause of death of late Sh. Alim on account of rash and negligent driving of respondent No.3-Maksood Khan.

5. As regards the argument with respect to forum hunting, it may be noted that the claimants while filing the claim petition have asserted that they are presently residing in a rented house in village Nai, Tehsil Punhana, District Nuh. They are the permanent residents of village Pathrali, Tehsil Pahari, District Bharatpur. The distance between the two places is not more than 30 kms. Bharatpur is an adjoining district to Nuh, although, both are located in different States. As per Section 166(2) of the Motor Vehicles Act, 1988, the claim petition can be filed either at a place where the accident took place or where the claimant works for gain or resides. As already noticed, the claimants have pleaded that they are residing in village Nai, Tehsil Punhana, District Nuh. Thus, the Tribunal at Mewat did have had the jurisdiction. It may be noted here that the insurance company except taking

an objection in the written statement, did not press the aforesaid objection with respect to territorial jurisdiction or forum hunting. It may be noted here that neither the insurer requested the Court to frame an issue nor objected to the jurisdiction of the Tribunal at the time of final hearing. The learned counsel has also failed to draw the attention of the Court to any evidence to prove that the claimants do not reside at village Nai, Tehsil Punhana, District Nuh.

6. Keeping in view the aforesaid discussion, this Bench does not find any force in the argument of the learned counsel for the appellant.

7. The next argument of the learned counsel for the appellant is with regard to minimum wages. It may be noted here that the claimants have claimed that late Sh. Alim aged about 22 years, was working as a driver on a monthly salary of Rs.15,000/-. However, the claimants have failed to produce any documentary evidence. The Tribunal relied upon the minimum rates notified by the Deputy Commissioner for unskilled workers to be employed on daily wages. Thus, the Tribunal took the monthly wage of an unskilled worker at Rs.12,100/-. Such wages as assessed can neither be said to be excessive nor unreasonable. No doubt, the minimum wages under the 1948 Act, can be used as a yardstick in fixing the monthly wage, however, it cannot be treated as an absolute factor. It depends upon the facts and circumstances of each case. The Hon'ble Supreme Court in **Jakir Hussein Vs. Sabir and others, 2015 7 SCC 252**, has held that the minimum wages notified under the 1948 Act is a good yardstick, however, they cannot be treated as absolute factor to be taken to determine the compensation.

8. This Bench has carefully read the judgment passed in **Shri Ram General Ins. Co. Ltd. (supra)**. On reading the judgment, it is apparent that the Court while relying upon the judgment of **Jakir Hussein (supra)** has held on the same lines. Hence, the judgment relied upon by the learned counsel representing the insurer does not help his case.

9. Keeping in view the aforesaid fact, the insurer has failed to make out a case for interference.

Consequently, the appeal is dismissed in limine.

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

20.07.2021

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Whether speaking/reasoned:
Whether reportable:

(ANIL KSHETARPAL)
JUDGE

Yes / No
Yes / No