

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

FAO-1956-2022 (O&M)

Date of decision: 07.05.2022

United India Insurance Company Ltd.

....Appellant

Versus

Suman Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harsh Aggarwal, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

This is an appeal filed by the Insurance Company while questioning the correctness of award passed by the Motor Accident Claims Tribunal, Hoshiarpur. A widow, mother and four minor children of late Sh. Arun Kumar filed the claim petition under Section 166 of the Motor Vehicles Act, 1988, for the award of compensation on account of death of their bread earner, in a motor vehicular accident that occurred on 11.01.2021. As per the case of the claimants, Sh. Arun Kumar died in a motor vehicular accident when he was standing by the side of the road while waiting for clearance of the traffic in order to cross over to the other side of the road. The offending bus driven by respondent no.1 killed Arun Kumar who was standing by the side of the road. The Tribunal, on appreciation of evidence, allowed the claim petition while ordering that the claimants shall be entitled to compensation of Rs.20,42,600/- alongwith interest at the rate of 6% per annum.

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

contends that deceased Arun Kumar was crossing a National Highway at midnight and therefore, he was contributory negligent in causing the accident. He further contends that the Tribunal has erred in assessing the income of the deceased at the rate of Rs.12,000/- per month. He submits that late Sh. Arun Kumar was a driver and therefore, his income should have been assessed at the rate of Rs.10,869/- per month as per the notification issued under the Minimum Wages Act, 1948.

In order to prove the accident, claimants have examined Harmesh Rana. He has stated that Arun Kumar drove the vehicle Truck No.PB-13-AR-6125 loaded with chemical to Chennai. After unloading the chemical, late Sh. Arun Kumar loaded another chemical substance from Vishakhapatnam and started his return journey. When he reached at Three Culvert Junction, Parawada Mandal, District Vishkhapatnam, he parked his truck by the side of the road and went to answer the call of the nature towards the opposite side. At about 10:30, he was waiting by the side of the road, when the offending bus caused the accident. The evidence of Harmesh Rana was corroborated by the evidence of Harpreet Singh. In these circumstances, there is no substance in the first argument.

As regards second argument, it may be noted that Arun Kumar was a professional driver working on heavy duty vehicle. Being an experienced driver, he went from Punjab to Chennai with chemicals. In such circumstances, the income assessed by the Tribunal, particularly, when accident took place in the year 2021, cannot be said to be

excessive.

In the end learner counsel representing the appellant contents that the Tribunal has erred in awarding escalation in the income at the rate of 30% on account of future prospects. He submit that deceased was working on a fixed salary, therefore, only 25% escalation can be granted.

Keeping in view the facts of the case, this Court is not inclined to interfere in the appeal, however, the appellant shall be at liberty to take this defence if the appeal for enhancement of compensation is filed by the claimants. Hence, dismissed.

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

07.05.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE