

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

FAO-3161-2022 (O&M)

Date of decision : 09.11.2022

The Oriental Insurance Co. Ltd.

... Appellant(s)

Versus

Gurcharan Kaur & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Punit Jain, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

The present appeal has been preferred by the appellant-insurance company against the award dated 02.03.2022 passed by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'Tribunal').

The argument raised by learned counsel for the appellant-insurance company is that the owner/insurer of the vehicle had stepped into the witness box and had stated that the vehicle on the date of the alleged accident was at the work shop and, hence, the story set up that the accident had occurred with the tipper bearing registration No.PB-08-EC-2513 is incorrect. Learned counsel for the appellant is, however, not in a position to deny the fact that the said tipper bearing registration No.PB-08-EC-2513 was released on *superdari* by the Court vide order dated 08.04.2019. In view of the fact that the vehicle was released on *superdari* on 08.04.2019, this argument of learned counsel for the appellant-insurance company cannot be accepted.

The second argument raised by learned counsel is that in the absence of any proof, the income of the deceased has been assessed on the higher side at Rs.12,000/- per month.

The claimant-respondent Nos.1 and 2, in the present case, had placed on record the Driving Licence of the deceased issued by United Arab Emirates (UAE) for heavy vehicles (Ex.A9), his identity cards (Ex.A10 and Ex.A12) and that his resident identity card was valid upto 07.04.2020 which is exhibited as Ex.A11.

Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. Vs. Mukesh Kumar Yadav & Ors. [2022 (1) SCC 198]** has held as under :

“10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally

*detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., (2013) 10 SCC 695** this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/-. As an amount of Rs.10,99,700/- is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/-. Further in view of the judgment of this Court in the case of **Magma***

General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors., 2018 SCC OnLine SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/-each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited, (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record.”

In the present case, the minimum wages of a driver at the time of the accident were Rs.11,000/- per month and the Tribunal has assessed the income of the deceased as Rs.12,000/- per month. Hence, the second argument of learned counsel for the appellant that the income has been assessed on the higher side cannot also be accepted. Keeping in view that the deceased was a driver employed in the UAE, the income assessed cannot be held to be on the higher side.

In view of the above, I do not find any illegality or infirmity in the award passed by the Tribunal. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

The statutory amount deposited be remitted to the claimants.
The appellant-insurance company shall deposit the entire amount as awarded by the Tribunal along with interest within a period of four weeks from today which shall, thereafter, be released forthwith to the claimants.

09.11.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO