

FAO No.2713 of 2017 (O&M)

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

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**FAO No.2713 of 2017 (O&M)
Date of Decision : 23.03.2022**

Cholamandalam MS General Insurance Co. Ltd. ...Appellant

versus

Sushma & Others ...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Madan Pal, Advocate for respondent Nos.1 to 5.

None for respondent No.6.

Mr. Ashit Malik, Advocate for respondent No.7.

ALKA SARIN, J. (Oral)

The present appeal has been filed by the insurance company challenging the award dated 06.02.2017 passed by the Motor Accident Claims Tribunal, Karnal (for short, the 'Tribunal') on the ground that excessive compensation has been awarded to the claimants.

2. Learned counsel for the appellant-Insurance Company would contend that the Tribunal while awarding the compensation has granted an addition of 50% towards the future prospects as well as granted excess amount under the conventional heads contrary to the law laid down by the Supreme Court in **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [2009(6) SCC 121]**; **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. [2017(16) SCC 680]** and **Magma General**

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Insurance Co. Ltd Vs. Nanu Ram alias Chuhru Ram & Ors. [2018(18) SCC 130].

3. The brief facts relevant to the present case are that on 21.04.2014 at about 10.30 PM the deceased was working on a Combine and was coming back to village Padwala. When the Combine reached 1 kilometre ahead of Basdhara bridge towards Karnal, there was a mechanical failure in the Combine and the driver stopped the Combine on the extreme left side of the road and the deceased was putting barricades on the back side of the Combine. Meanwhile, a Canter bearing registration number HR-65-5078, being driven by respondent No.1 in a rash and negligent manner, came from the side of Delhi and hit the deceased from behind causing multiple and grievous injuries. The deceased was taken to Kalpana Chawla Medical College Hospital, Karnal where he was declared dead by the doctors. FIR bearing No.176 dated 22.04.2014 under Sections 279, 337 and 304-A IPC was registered against the respondent No.1 at Police Station Madhuban, District Karnal.

4. Claim petition was filed by the wife, minor children, mother and father of the deceased (respondent Nos.1 to 5) stating therein that the deceased at the time of his death was 25 years of age and earning a monthly income of Rs.10,000/- per month.

5. On notice, respondent Nos.6 and 7 herein, driver and owner of the vehicle, appeared and filed their written statements raising preliminary objections regarding maintainability, suppression of true and material facts and further denying that the accident took place.

6. The appellant-Insurance Company also filed its written statement taking various preliminary objections as available to it. It was

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further stated by the appellant-Insurance Company that the driver of the offending vehicle did not have a valid and effective driving licence and that the appellant-Insurance Company was not liable to indemnify the alleged insured.

7. On the basis of the evidence and the pleadings of the parties the Tribunal, while holding the deceased as an unskilled labourer, awarded the following compensation :

Monthly Income	₹ 8100/-
50% Future Prospects	₹12,150/- (₹8100+₹4050)
Deduction 1/4 th	₹9112/- (₹12150 - ₹3038)
Annual Income	₹109344/- (₹9112 x 12)
Multiplier (18)	₹19,68,192/- (₹109344 x 18)
Loss of consortium and loss of estate to widow	₹1 lakh
Loss of love and affection to minor children	₹2 lakh/- (₹1 lakh each)
Loss of love and affection to parents	₹50,000/- (₹25000/- each)
Total Compensation	₹23,43,192/-

8. Learned counsel for the appellant-Insurance Company would contend that excess amount has been granted under the head future prospects as well as under the conventional heads. Learned counsel has further challenged the award of the Tribunal on the ground that the deceased has been treated as an unskilled labourer but his notional salary has been assessed as per the D.C. Rates instead of the minimum wages under the Minimum Wages Act, 1948.

9. Learned counsel for respondent Nos.1 to 5 has vehemently contended that the compensation granted is just and proper especially in

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view of the fact that the deceased was merely 25 years of age and has left behind two minor children who have their whole life ahead of them.

10. I have heard the learned counsel for the parties.

11. In the present case it has been brought to the notice of the Court that the appeal filed by the claimants being FAO No.7468 of 2017 was dismissed by this Court on 14.08.2018. A perusal of the impugned award reveals that the Tribunal has erred in granting an addition of 50% towards future prospects as well as the amount granted under the conventional heads is also in excess and not in consonance with the law laid down by the Supreme Court. The argument raised by the learned counsel for the appellant-Insurance Company qua the notional salary of the deceased having been taken as per the D.C. Rates instead of being calculated on the basis of the Minimum Wages Act, 1948 cannot be accepted inasmuch in the case of **Shri Ram General Insurance Company Limited & Ors. Vs. Beant Kaur & Ors. [2019(3) SCT 684]**, a detailed discussion has been made on the applicability of the minimum wages prescribed as per the Minimum Wages Act, 1948 as well as the case law applicable thereto. In para 15 it has been held as under :

“15. It has been held in a plethora of judgements by the Hon'ble Supreme Court that it is the duty of the tribunal/Court to award 'just compensation'. Motor Vehicles Act is admittedly a beneficial legislation, therefore to circumscribe the scope of assessment of income of the deceased/injured to the minimum wages as may be notified under the Minimum Wages Act would not be justified. Needless to say, assessment of income in

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cases where no specific documentary evidence is led in support of the claim, such assessment would be dependent upon the facts and circumstances of each case. There may be instances where oral evidence alongwith other supporting evidence on record may inspire confidence. There has to be a sound evaluation of the oral evidence and supporting circumstances in the factual matrix of each particular case. The Tribunal/Court while keeping in view the minimum wage fixed under the Minimum Wages Act as the basic criterion at the outset would proceed to determine whether income of the deceased/injured is to be assessed at any higher level keeping in view the evidence on record. This in my considered view, would be the correct approach to follow in such cases.”

Hon’ble Supreme Court in the case of **Jakir Hussein Vs. Sabir & Ors. [2015(7) SCC 252]** has held as under :

“14. We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as to whether the appellant is entitled for further enhancement of compensation? We have perused the impugned judgment and order of the High Court and the award of the Tribunal. After careful examination of the facts and legal evidence on record, it is not in dispute that the

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appellant was working as a driver at the time of the accident and no doubt, he could be earning Rs.4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a driver earns Rs.128/- per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage, as per State Government Notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the appellant's daily wage at Rs.150/- per day (Rs.4,500/- per month i.e. Rs.54,000/- per annum) as he was a driver of the motor vehicle which is a skilled job. Further, the Tribunal has wrongly determined the loss of income during the course of his treatment at Rs.51,000/- for a period of one year and five months. We have to enhance the same to Rs.76,500/- (Rs.4,500 X 17 months).”

In the case of **Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited [2011(13) SCC 236]**

Hon’ble Supreme Court has held as under :

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“14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the

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possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to 150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-."

The deceased in the present case was aged 25 years and is survived by his wife, two minor children and parents. The minor children have their entire life ahead of them. Their education has to be taken care of as well as the living expenses of all the claimants. Keeping in view the rising prices as well as the fact that the education of the minor children is still at the threshold, I do not deem it appropriate to interfere in the income as assessed by the Tribunal.

12. The other grounds raised by the learned counsel for the appellant-Insurance Company regarding excess amount having been awarded under the heads of future prospects and conventional heads is well founded. As per the law laid down by the Hon'ble Supreme Court in **Sarla Verma, Pranay Sethi and Magma General Insurance Co. Ltd. (supra)**, the amount re-worked with 10% increase as per the law laid down in **N. Jayasree & Ors. vs. Chola mandalam MS General Insurance Company Ltd. [2021(4) RCR (Civil) 642]** is calculated as under :

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Income Per Month	₹8,100/-
Annual Income	₹97,200/-
Deduction 1/4 th	₹72,900 (₹97200 - ₹24300/-)
Future Prospects (40%)	₹1,02,060/- (₹72900 + ₹29160)
Multiplier (18)	₹1,83,7080/- (₹102060 x 18)
Loss of Estate	₹16,500/-
Funeral Expenses	₹16,500/-
Loss of Consortium :	
Spouse	₹44,000/-
Parental	₹88,000/-
Filial	₹88,000/-
Total Compensation	₹20,90,080/-

13. While issuing notice of motion on 27.04.2017, the amount of future prospects and interest thereon had been stayed. In view thereof, the balance amount towards the compensation, as re-worked, would be deposited by the appellant-Insurance Company within a period of three weeks from today with 8% interest failing which the amount would carry an interest of 9% till the date of realization.

14. In view of the above the appeal is allowed and the award passed by the Tribunal stands accordingly modified.

March 23, 2022
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(ALKA SARIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No