IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.631 of 2022 (O&M)
Date of decision: 24.08.2022

Oriental Insurance Company Limited

....Appellant

Versus

Jannati and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ram Avtar, Advocate
for the appellant.

Mr. Ashish Gupta, Advocate
for the caveators/respondents No.1 and 2.

ARVIND SINGH SANGWAN J.

Prayer in this appeal filed by the appellant/insurance company is to set-aside the award dated 10.09.2021, passed by Motor Accident Claims Tribunal, Mewat.

Brief facts of the case are that the respondents/claimants are the legal heirs of one Jahid, who died in a road accident on 03.08.2018.

The claimants/respondents are the parents of the deceased.

The claim petition was contested by the owner and insurance company as the driver was ordered to be ex parte.

Under Issue No.1, the Tribunal recorded a finding that the accident, in question was caused due to rash and negligent driving of the driver Rahim Khan as the accident was proved by PW-4 Krishan, an eye-witness, who has given each and every detail of the rash and negligent driving of respondent No.1, resulting into the death of Jahid.

The Tribunal has also taken into consideration the fact that respondent No.1 is facing trial in FIR No.517 dated 03.08.2018 registered under Sections 279, 304-A IPC at Police Station Sector 58, Faridabad.

Counsel for the appellant/insurance company has not contested the finding recorded by the Tribunal on Issue No.1 and the only argument raised by the appellant/insurance company is with regard to the quantum of compensation as assessed by the Tribunal.

The Tribunal has granted the compensation in the following manner:-

Heads of Claim	**Calculations**
Income	Rs. 12,100/- per month
40% to be added as future prospects	Rs. 12,100 + 4,840 = Rs. 16,940/-
1/2 deducted as personal and living expenses of the deceased.	Rs. 16,940 – 8,470 = Rs. 8,470/-
Annual income of the deceased.	Rs. 8,470 x 12= Rs. 1,01,640/
Compensation after multiplier of 18 is applied.	Rs. 1,01,640/- X 18 = Rs. 18,29,520/-
Loss of filial consortium to petitioners being parents of deceased @ Rs. 40,000/- each.	Rs. 80,000/-
Funeral expenses & transportation.	Rs. 15,000/-
Loss of Estate	Rs. 15,000/-
Total	**Rs. 19,39,520/-**

It is argued on behalf of the appellant that the deceased Jahid was 21 years of age and was a Cleaner on the truck under the employment of M/s. Delhi Baroda Road Carrier Private Limited.

Counsel for the appellant has further submitted that though it is the case of the claimants/respondents that the deceased was earning Rs.10,000/- per month as salary plus Rs.3,000/- as diet money i.e. total Rs.13,000/- per month but no evidence is adduced by the claimants to this effect and therefore, the Tribunal has taken the deceased to be an unskilled labourer on the date of accident, however, instead of taking the minimum wages to Rs.8541.64/- per month as per the notification of the State of Haryana. It is also argued that the Tribunal has erred in taking the income of the deceased as Rs.12,100/- on the basis of the D.C. rates as circulated by the Deputy Commissioner, Mewat.

Counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in ***"Govind Yadav vs New India Assurance Company Limited",*** passed in **Civil Appeal No.9014 of 2011**, to submit that the in such circumstances, the income of the deceased should be taken as per the minimum wages prescribed by the State Government. It is further submitted that even the interest @ 7.5% is awarded on a higher side whereas it should not be more than 6%.

Counsel for the appellant has, thus, contended that the amount of compensation be assessed by taking the income of the deceased as Rs.8541.64/- instead of Rs.12,100/- per month and the rate of interest be also reduced to 6% from 7.5%.

Counsel appearing for the caveators/respondents has, however, argued that it has come in the evidence of PW-3 that the deceased was earning Rs.13,000/- per month as he was working as a Cleaner/conductor under the employment of respondent No.2. It is also submitted that this fact is not disputed or denied by respondent No.2 that he was working as a Cleaner, however, the Tribunal on the basis of the cross-examination of the claimant/PW-3 that he is not having any documentary proof regarding the employment or income has taken the minimum wages as prescribed by the Deputy Commissioner, Mewat.

Counsel for the respondents/claimants has relied upon the judgment of the Co-ordinate Bench in ***"National Insurance Company***

Limited vs Meena Devi and others", passed in **FAO No.782 of 2022**, decided on 11.03.2022, wherein a similar issue was involved as to whether the income of the deceased is to be taken under the Minimum Wages Act or as per the Deputy Commissioner rate. The Court while relying upon the judgment of the Hon'ble Supreme Court in ***"Shri Ram General Insurance Company Limited and others vs Beant Kaur and others",*** **2019(3) SCT 684,** ***"Jakir Hussein vs Sabir and others",*** **2015(7) SCC 252** and ***"Ramachandrappa vs Manager, Royal Sundaram Alliance Insurance Company Limited",*** **2011(3) SCC 236**, has held that there is no mandate of law that only the rates prescribed under the Minimum Wages Act, 1948, will apply by assessing the income of an unskilled labourer as it is at best a yardstick for assessment of the income.

Counsel for the claimants/respondents has also relied upon the another judgment ***"IFFCO TOKIO General Insurance Company Limited vs Lalita Devi and others",*** **2021(2) RCR (Civil) 824**, wherein again this Court while considering the case law has held that no doubt that the notification issued by the State Government regarding linking of minimum wages with the consumer price index is a relevant factor, however, the same is not binding as such on the Tribunal and further held that in view of the judgment ***"Magma General Insurance Company Limited vs Nanu Ram @ Chuhru Ram",*** **2018(4) RCR (Civil) 333** wherein the Hon'ble Supreme Court after noticing that minimum wages were notified on a lower side and the Tribunal has assessed the income on a higher side, did not interfere in the income assessed by the Tribunal. Counsel for the respondents has, thus, argued that for determining the income of an unskilled labourer, a clue from the notification issued by the Government can be taken for assessment of the income, however, it cannot be held that the Tribunal has no jurisdiction to go beyond the notification and rely upon the rates fixed by the Deputy Commissioner.

Counsel for the claimants lastly argued that the Tribunal has rightly assessed the income of the deceased as Rs.12,100/- per months and has deducted ½ of the income of the deceased towards his personal and living expenses and therefore, the amount of compensation has been rightly assessed by the Tribunal.

After hearing the counsel for the parties and going through the impugned judgment and considering the arguments raised by the counsel for the parties, I find that the findings of the Tribunal is based on appreciation of evidence and this Court in the absence of any contrary evidence do not find it appropriate to interfere with the impugned award.

Accordingly, the appeal filed by the appellant/insurance company is dismissed in limine.

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

(ARVIND SINGH SANGWAN)
JUDGE

24.08.2022
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No