

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4913 of 2022 (O&M)
Date of Decision:19.12.2022

Shri Ram General Insurance Co. Ltd.Appellants
Vs.
Ankita and othersRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajbir Singh, Advocate for the appellants.

Mr. Arvind Rajotia, Advocate for the respondents.

DEEPAK GUPTA, J.

Insurance Company is in this appeal, aggrieved by the award dated 18.07.2022 passed by learned MACT, Patiala, whereby compensation of ₹49,43,544/- has been allowed in favour of claimants- respondents No.1 to 3, on account of death of Jatinder Singh, in claim petition titled as '**Ankita & Others vs. Rajinder Kumar & others**' [CNR: PBPT01-007798-2021].

2. Brief facts of the case are that on 08.07.2021, Jatinder Singh along with Shama Singh and Surinder Singh were returning after irrigating their fields in Village Khelan. Jatinder Singh was driving his motor-cycle No.PB-65-AH-5319 on correct side of the road, being followed by Surinder Singh on separate motor-cycle. At about 10:30 PM, as he was about to reach the turn of Village Jodhpur on Utalan-Khelan road, a car bearing registration No.HR-02-AT-6543 came from the rear side being driven in rash and negligent manner and struck to the motor-cycle of Jatinder, who fell on the road and suffered multiple injuries. Jatinder Singh in injured condition was taken to Civil Hospital, Ambala and then referred to PGI, Chandigarh but

FAO No.4913 of 2022 (O&M)

unfortunately, he succumbed to the injuries. FIR No.39 dated 09.07.2021 was registered at Police Station Handesra, SAS Nagar under Sections 279, 427, 304-A IPC.

3. Claimants are the widow, minor daughter and mother of the deceased. They claimed compensation under Section 166 of the Motor Vehicle Act on account of death of said Jatinder Singh by pleading that deceased was 34 years of age at the time of accident. He was working as Store Incharge-cum-driver and also doing the work of agriculture, thereby earning ₹30,000/- per month.

4. All the respondents opposed the claim. After taking the evidence, learned Tribunal reached to the finding that accident was caused due to rash and negligent driving of the offending car. It was further found that deceased was getting ₹15,000/- per month as salary besides incentive of ₹1,40,000/- per annum, which was part of his income. By adding this amount of ₹1,40,000/- in his earnings, the total compensation was assessed.

5. The only ground urged before this Court by the Insurance Company is that the amount of ₹1,40,000/- as incentive has been wrongly added in the earnings of the deceased. On the other hand, the contention of learned counsel for the contesting respondents- claimants is that incentive was part of income as the same was being regularly paid to him as evident from his bank statement and so, learned Tribunal has rightly included the same in total income of the deceased for the purpose of assessing the compensation. Interestingly, Ld. counsel for both the sides have relied upon *Triveni Kodkany and others Vs. Air India Limited and others, 2020(4) R.C.R. (Civil) 184*, to support their respective submissions.

6. I have considered the submissions of both the sides and have perused the paper book including the part of trial court record, which was produced by

FAO No.4913 of 2022 (O&M)

learned counsel for the respondents, without any objection on part of the appellant, during arguments.

7. CW2 Manoj Kumar is the Accounts Officer with Mittal Machines Pvt. Ltd. , Ambala Cantt., with whom Jatinder Singh was working as Store In-charge since December, 2019 till his death, as has come in the testimony of said CW2. As per his deposition, deceased was employed with a salary of ₹15,000/- per month. Apart from this, he was paid incentive of ₹1,40,000/- per annum. The salary as well as incentive was paid to the deceased through his bank account with Punjab National Bank and Axis Bank. CW2 produced the ledger accounts regarding payment of salary, incentive as well as advances as Ex.CW2/1 to Ex.CW2/7.

8. Ex.CW2/7 is the salary certificate issued by the employer of the deceased i.e. Mittal Machines Pvt. Ltd. revealing that deceased was getting salary of ₹15,000/- per month. There is no reference of any incentive in the said salary certificate and it is because of this reason that it is contended by learned counsel for the appellant that the amount of incentive should not have been included in the total income of the deceased. However, perusal of Ex.CW2/3 reveals that it is ledger account pertaining to incentives paid to deceased- Jatinder Singh during 01.04.2020 to 31.03.2021. The following table will show the amounts paid to the deceased during this period:-

Date of Payment	Head	Amount
30.04.2020	Site Expenses	₹10,000/
31.05.2020	do	₹12,000/-
30.06.2020	—do—	₹12,500/-
31.07.2020	—do—	₹12,000/-
31.08.2020	—do—	₹11,000/-

FAO No.4913 of 2022 (O&M)

30.09.2020	--do--	₹13,500/-
October, 2020	--do--	₹12,000/-
30.11.2020	--do--	₹12,000/-
31.12.2020	--do--	₹10,080/-
31.01.2021	--do--	₹12,000/-
28.02.2021	--do--	₹11,000/-
31.03.2021	--do--	₹12,000/-

9. Ex.CW2/6 is the ledger account regarding incentives paid to deceased Jatinder Singh during 2021-2022, till his accidental death on 08.07.2021. This document reveals following payments:-

Date of Payment	Head	Amount
25.04.2021	Site Expenses	₹10,000/-
20.06.2021	--do--	₹10,000/-
30.06.2021	--do--	₹12,000/-

10. The above-said tables clearly indicate that incentives in the name of site expenses were being regularly paid to deceased Jatinder Singh every month. The above table does not give any indication that payment of this incentive was dependant upon performance of the deceased for any particular act. In these circumstances, there is no reason to disbelieve the testimony of CW2 Manoj Kumar, the Accounts Officer of the employer of the deceased, as per which incentive is a regular feature of their employment. He categorically denied the suggestion that incentive was not the regular feature of their employment.

11. In *Triveni Kodkany and others Vs. Air India Limited and others'* *case (supra)*, deceased Mahendra was employed as a Regional Director for Middle Eastern Region with GTL Overseas. He died in an air crash, which took place on 12.05.2010. His legal representatives filed claim petition against Air India be-

FAO No.4913 of 2022 (O&M)

fore National Consumer Dispute Redressal Commission. They were granted compensation against which both the parties went in appeal before Hon’ble Supreme Court. It was found that break-up to the annual cost to the Company of the deceased was as under:-

Basic (AED)	HRA (AED)	Trans- port Allow- ance (AED)	Tele- phone Allow- ance (AED)	Gross Salary per year (AED)	LTA (AED)	Medi- cal (AED)	Gratu- ity (AED)	Total CTC per year (AED)
2,66,398	102,569	40,957	30,000	439,924	12,000	15,144	15,327	482,395

NCDRC determined the total income as AED 4,52,395/- by deducting telephone allowance of AED 30,000/-. Deduction of 20% was made towards personal expenses of the deceased, as he was survived by four dependants. Addition of 25% was made on account of future prospects. Multiplier of 13 was used and total compensation was computed at AED 58,81,135.

12. Amongst others, one of the submissions made by the complainants before Hon’ble Supreme Court in case supra, which is relevant for the purpose of present case, is that only the salary of the deceased was taken into account and not the income. It was contended that the deceased was entitled to other benefits apart from salary including employees stock options (ESOP) and other financial benefits, which have not been taken into consideration. The said submission was made on the basis of a communication dated 20.03.2011 of the Vice President, Human Resources of the employer of the deceased. The communication read as under:-

“As part of the Talent Development initiative in the organization, Mahendra Kodakany as a key performer was inducted in the Family Jewel Program (FJP) in the year 2006-07 and thereby graduated to the Business Partner Program (BPP) in the year July 2007 – June

FAO No.4913 of 2022 (O&M)

2010. As part of both the programs he was eligible for a benefit (over and above his CTC) amount of INR 4.5 Lacs per annum and INR 13.8 lacs per annum respectively.”

13. It was held by Hon’ble Supreme Court as Under;-

“11. The material on record does not indicate that the deceased was entitled to a specified quantum of ESOPs as a matter of right. These would be linked to performance. Apart from the letter of the employer, no evidence was produced before the NCDRC to indicate that the ESOPs were payable at a certain rate or quantum every year. These were incentives paid to the deceased. Similarly, the other financial benefits which have been adverted to in the above extract from the letter dated 21 March 2011, have not been demonstrated to be a matter of right. The letter indicates that the deceased was eligible for certain benefits on an annual basis. In the absence of cogent evidence indicating that this was a part of the salary package which was payable to the deceased as an entitlement irrespective of performance, we are not inclined to accept the submission that the incentive benefits should be added back to the income for the purpose of computation.”

14. It is, thus, clear that in the case before Hon'ble Supreme Court, as the deceased was found eligible for certain benefits on annual basis but there was no evidence to indicate that it was part of salary package, which was payable to him as an entitlement irrespective of performance, therefore, incentive benefits were held not liable to be added to the income of the deceased for the purpose of computation.

15. The facts of the present case are distinguishable. In this case, as has already been noticed that deceased Jatinder was being regularly paid incentives in

FAO No.4913 of 2022 (O&M)

the name of site expenses on monthly basis. Most of the time, the same have been paid to him on the last day of month, which clearly indicate that it was part of salary and said fact finds support from the testimony of CW2, the Accounts Officer of the employer of the deceased. As has been observed by Hon’ble Supreme Court in *Triveni’s case (supra)*, bifurcation of the salary into diverse heads may be made by the employer for a variety of reasons. In the present case also, it appears that employer of the deceased had not made the regular incentives being paid as site expenses to the deceased as part of salary for some or the reason but that cannot be a reason to deprive the said incentives to be not added to the total earnings of the deceased.

16. In view of the aforesaid discussion, it is held that there is no merit in the present appeal. Learned Tribunal did not commit any error by including the amount of ₹1,40,000/-, which was received by the deceased in the year prior to his death, in his total salary. Consequently, present appeal is dismissed.

December 19, 2022	(DEEPAK GUPTA)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No