117 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1096-2023 (O&M)
Date of Decision : 01.05.2023

United India Insurance Company Ltd. ....Appellant

versus

Shanno and others ....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Amit Kundra, Advocate for the appellant.

Mr. Rajiv Kumar Saini, Advocate for respondent Nos.1 and 2.

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B.S. Walia, J. (Oral)

[1] Prayer in the appeal is for reduction of compensation of Rs.24,92,912/- awarded to therespondents claimants by the learned Motor Accident Claims Tribunal, Karnal. Learned Counsel contends that income of the deceased ought to have been assessed as per the minimum wages under the Minimum Wages Act instead of on the basis of average of Minimum Wages fixed by the Labour Commissioner, Haryana and the rate of wages fixed by the Deputy Commissioner, Karnal. Learned Counsel further contends that deduction towards personal expenses of the deceased ought to have been @ 50% instead of @ 1/3rd of the income of the deceased as made by the learned Tribunal.

[2] Notice of motion to respondent Nos.1 and 2 only as learned counsel for the appellant contends that the award imposes liability on the appellant Insurance Company and the owner and driver jointly and severally. In view of the statement of learned counsel for the appellants, notice to respondent Nos.3 and 4 is dispensed with.

[3] Mr. Rajiv Kumar Saini, learned counsel for Cavetaor-respondent Nos.1 and 2, who is present in Court, accepts notice and vehemently opposes the prayer for reduction by contending that the mother and unmarried sister of deceased Mubarik Ali were rightly awarded compensation by the learned Tribunal. Learned counsel relies upon the decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd. versus Nanu Ram alias Chuhru Ram & others, 2018(18) SCC 130, Sarla Verma and others versus Delhi Transport Corporation and another 2009(6) SCC 121, National Insurance Company Ltd. Versus Meena Devi and others Law Finder Doc Id # 1975439**, **FAO No.631 of 2022 titled as Oriental Insurance Company Limited versus Jannati and others decided on 24.08.2022, FAO No.3584 of 2022 titled as United India Insurance Company Limited versus Amarjit and others decided on 26.08.2022** as upheld by Hon'ble the Supreme Court vide order dated 27.02.2023 in SLP (Civil) Diary No.(s). 42225 of 2022 in case titled as **United India Insurance Company Limited versus Amarjit and others.**

[4] I have considered the submissions of learned counsel.

[5] Admittedly, the deceased Mubarik Ali was aged 25 years at the time of his death on 01.12.2019 and was working as a cleaner in a truck though on the basis oflicenceof driver of a heavy vehicle issued to the deceased, it is claimed that he was working as a driver and drawing salary of Rs.25,000/- per month. However, the learned Tribunal by treating the deceased as unskilled worker assessed his monthly income on the basis of rates fixed under the notification issued for the relevant period by the State of Haryana under the Minimum Wages Act and the wages fixed by the Deputy Commissioner, Karnal. The Tribunal further by taking into account that the deceased had left behind his widowed mother and unmarried sister

treated the case tobe one falling in the exceptional clause as contained in the decision of **Sarla Verma's** case(supra) and made deduction towards personal expenses of the deceased @ 1/3rd instead of 50% as per the general rule. Hon'ble the Supreme Court in**Magma's** case (supra) while taking into account the decision of Hon'ble Supreme Court in **Sarla Verma's** case (supra) as also the fact that the deceased therein was living in a village wherein he was residing with his aged father who was about 65 years old and unmarried sister, upheld the deduction made by the High Court towards personal expenses @ 1/3rd. In **Sarla Verma's** case (supra) Hon'ble the Supreme Court held that where the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the mother but with the exception that where the family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses are to be restricted to one-third and contribution to the family is to be taken as two-third. Secondly, in **Meena Devi's case (supra),** a Coordinate Bench of this Court rejected the challenge to the award on the ground that instead of assessing the compensation on the basis of the rates prescribed under the Minimum Wages Act, 1948, income had been assessed at the rate as prescribed by the Deputy Commissioner Karnal, by observing as under:

> *" 14. The wife of the deceased namely, Meena Devi, respondent No.1 herein, stepped into the witness box as PW1 and she in her examination-inchief has stated that her husband was a Mason and was earning an amount of 20,000/- per month. Since there was no other evidence besides her oral testimony, the income of the deceased was assessed as 14,610/- per month on the basis of the rates as prescribed by the Deputy Commissioner, Karnal.*
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> *15. It is trite that the minimum wage notification is merely a yardstick and not an absolute factor to be taken to determine the compensation payable to the claimants. It has been laid down in a plethora of judgments by Hon'ble the Supreme Court that the*

Courts must strike a balance between inflated and unreasonable demands of the victim and the equally untenable claim of the opposite party saying that nothing is payable. However, at the same time, the award must be just, which would necessarily intake that the compensation to the extent possible should adequately restore the claimants to the position prior to the accident. In the present case, the deceased was a 27 years' old man and the claimants are his widow, mother and minor children. The minor children are aged 5 and 6 years (respondent Nos.2 and 3, respectively). The minor children have their whole life ahead, their formal education, if started at all, would be at the very initial stage. The compensation cannot in any manner compensate for the loss suffered by the family of the deceased but it should atleast be sufficient to mitigate the financial difficulties the family is likely to face.

16. The learned counsel for the appellant is unable to show to the Court any reason to doubt the testimony of Meena Devi-PW1 as also the fact that no judgment has been referred which lays down that the compensation awarded in the absence of evidence qua the income of the deceased should be in accordance only with the rates prescribed under the Minimum Wages Act, 1948. Rather, the judgments referred to by learned counsel for the respondent Nos.1 to 4 are to the contrary.

17. Keeping in view the peculiar circumstances, especially the tender age of the children who have their whole life ahead of them, as also the fact that there is no mandate of law to only apply the rates as prescribed under the Minimum Wages Act, 1948 and that it is at best a yardstick, I do not deem it appropriate to interfere in the award passed by the Tribunal. The present appeal is accordingly dismissed. Pending applications, if any, also stand disposed off."

[6] Reliance has also been placed on the decision in**Oriental Insurance Company Limited versus Jannati and others' case (supra)** wherein similar challenge was repelled by observing that no doubt the notification issued by the State Government regarding linking of minimum wages with the consumer price index is a relevant factor but the same is not binding as such on the Tribunal.

[7] To similar effect, is the decision of a Coordinate Bench of this Court in **United India Insurance Company Limited versus Amarjit and others' case (supra),** where the Tribunal assessed income @ ₹14,610/-, as per the minimum wages fixed by the Deputy Collector of District Karnal by holding that the Tribunal was not bound to accept the minimum wages notified by the Labour Commissioner and that the Tribunal was required to analyze the evidence.In said case, rate of wages notified by the Deputy

Collector District Karnalas were relied upon by the Tribunal were upheld by Hon'ble the Supreme Court vide order dated 27.02.2023 in SLP (Civil) Diary No.(s). 42225 of 2022 in case titled as **United India Insurance Company Limited versus Amarjit and others.**

[8] Accordingly, in view of the decision of Hon'ble the Supreme Court in **Magma's** case (supra) as well as in view of the judgments relied upon by learned counsel for the respondents, I am of the considered view that there is no infirmity in the award passed by the learned Tribunal bydeducting 1/3rd of the income of the deceased towards personal expenses and assessing 2/3rd of the income of the deceased towards dependency on account of the deceased having left behind a widowed mother and an unmarried sister as also in view of the deceased although working as a cleaner yet having a driving licence of a heavy vehicle, and the Tribunal having assessed the income of the deceased @ Rs.11,817/- on the basis of an average of the notification issued under the Minimum Wages Act and the rates as fixed by the DC of District, Karnal.

[9] Accordingly, finding no merit in the appeal, the same is dismissed.

(B.S. Walia)
Judge

01.05.2023
ps

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No