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

(126) **FAO-1443-2023 (O&M)**
Date of Decision : 24.03.2023

National Insurance Company Limited

...Appellant

Versus

Sachin and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gopal Mittal, Advocate for the appellant.

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Harsimran Singh Sethi J. (Oral)

The present first appeal has been filed against the Award dated 01.12.2022 passed by the Motor Accident Claims Tribunal, Rohtak.

The only argument raised in the present appeal is that while assessing the income of the victim, the court below has given the benefit keeping in view the Notification issued by the Deputy Commissioner of a District concerned fixing the minimum wages whereas, the same should have been assessed as per the Minimum Wages Act, 1948.

The said question is no longer res-integra. The question whether the minimum wages fixed under the Minimum Wages Act is the only criteria to determine the income of the victim in case no cogent evidence comes on record to assess the income of the victim came up for consideration before the Hon'ble Supreme Court of India in **Jakir Hussein vs. Satbir and others 2015(7) SCC 252.** In the said case, though, as per

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the minimum wages, the victim's salary would have been assessed as Rs.3840/-, but Hon'ble Supreme Court of India held that as the victim was working as a driver, his earning was assessed @ Rs.4500/- per month was valid though, the same was over and above the minimum wages fixed by the State under the Minimum Wages Act. Relevant paragraph of the said judgment is 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 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*

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> *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).”*

A Coordinate Bench of this Court in **Shri Ram General Insurance Ltd. and others vs. Beant Kaur and others 2019 (3) SCT 684** has held that though, the grant of compensation is a beneficial legislation and in order to grant the benefit under the said legislation, the facts of each and every case needs to be seen before awarding the compensation. Hon'ble Supreme Court of India further held that Minimum Wages Act, 1948 alone cannot be considered as a sole criteria to fix the emoluments of the victim ignoring the other notification issued on the aspect of minimum wages to be given to the employees as the Minimum Wages Act, 1948 is not the only yardstick to assess the income of the victim where the claimants/victim has not been able to prove his private or Government employment.

Keeping in view the said proposition of law, the contention of the learned counsel for the appellant that the sole yardstick of minimum wages as notified under the Minimum Wages Act is to be applied to ascertain the income of the victim cannot be considered as settled principle of law hence, cannot be accepted and is accordingly rejected.

As far as the reliance being placed by the learned counsel for the appellants upon the judgment of the Coordinate Bench of this Court in FAO No. 2110 of 2016 titled as ***Shri Ram General Insurance Ltd. and others Vs. Beant Kaur and others***, decided on 14.03.2019, the said judgment has already been considered by a Coordinate Bench of this Court

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in **FAO No.782-2022** titled as **National Insurance Company Limited vs. Meena Devi and others** decided on 11.03.2022 wherein, it has been held that minimum wages fixed by the Deputy Commissioner taken into account to assess the income of the victim by the tribunal is correct keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India. The relevant paragraphs of the ***Meena Devi (supra)*** are as under:-

> *"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.*
>
> *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*

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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."

That being so, once the judgment in ***Shri Ram General Insurance (Supra)*** has been differentiated by the Coordinate Bench of this Court in ***Meena Devi (supra)*** by placing reliance upon the judgement of the Hon'ble Supreme Court of India, no benefit of the judgment in ***Beant Kaur (supra)*** can be extended in favour of the appellant.

No other argument was raised.

Keeping in view the above, no interference is called for by this Court in the present appeal.

Dismissed.

CM-5472-CII-2023

As the main appeal has been dismissed, the present application also stands dismissed.

March 24, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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