

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 3279/2019

Date of decision:23/03/2023

New India Assurance Co.Ltd.

.....Appellant

Vs.

Devikala Adhikari and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTAPresent:- Mr. Ashwani Talwar, Advocate with
Mr. Aakash Sridhar, Advocate for the appellant.

Ms. Kamlesh, Advocate for the respondents/claimants.

Nidhi Gupta, J.

Present appeal has been filed by the Insurance Company assailing the Award dated 1.3.2019 passed by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') in MACT Case No. 24 of 2016 filed under Section 166/140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Vide the impugned Award, the Id. Tribunal awarded compensation of Rs.14.68 lacs along with interest @ 7% to the claimants/respondents 1 to 5 herein, being the widow, one major and three minor children of the deceased Devi Ram Adhikari.

Ld. Tribunal on appraisal of pleadings and evidence led by the parties held that deceased had died due to injuries suffered by him in a motor vehicular accident that took place on the intervening night of 24-25.1.2016 due to the rash and negligent driving of Maruti Ertiga bearing registration No. DL-2CAU-5707 (hereinafter referred to as the 'offending

vehicle') being driven by respondent no.6, owned by respondent no.7, and insured by the appellant herein.

Ld. Counsel for the appellant assails the Award primarily on the ground that Id. Tribunal has assessed the income of the deceased as Rs.11,000/- per month. It is submitted that claimants produced no proof whatsoever regarding income of the deceased and therefore, income of the deceased ought to have been assessed as Rs.9000/- per month on the basis of relevant minimum wage Notification No.3/42/83-3 Lab. dated 21.10.2015 as per which minimum wage admissible to a skilled labourer was Rs.9000/- per month.

It is further submitted that the Id. Tribunal has granted Rs.50,000/- each to claimants 2 to 5/ children of the deceased towards loss of love and affection. It is submitted that as per law laid down in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, respondents 2 to 5 are entitled to Rs.44,000/- each on account of consortium.

In response it is submitted by the Id. counsel for the claimants that the deceased was working as a Watchman and in actual fact, deceased was earning Rs.18,000/- per month. Ld. Counsel for the claimants refers to reasoning of the Id. Tribunal in para 14 of the impugned Award to submit that the Id. Tribunal has observed therein that even Class IV Employee/Peon was being paid more than Rs.13,000/- per month on daily wage at the time, and therefore, keeping in view the principle of natural justice and fair play as also judgment of the Supreme Court in **Munna Lal Jain and another v Vipin Kumar Sharma and others, 2015(3) RCR 447**,

the Id. Tribunal had taken the notional income of the deceased as Rs.11000/- per month.

No other argument has been raised on behalf of the parties.

Heard Id. Counsel.

Perusal of the record of the case shows that no proof of income of the deceased has been produced by the claimants. It has been repeatedly held that in the absence of proof of income, notional income of the deceased has to be taken as per the relevant Minimum Wage Notification as there has to be some rational framework and consistent basis for assessing notional income. Notional income cannot be assessed on the basis of guesswork. Ld. Counsel for the appellant has produced the abovementioned Notification No.3/42/83-3 Lab. dated 21.10.2015 which shows that the minimum wage payable to an unskilled worker is Rs. 7600/- per month, and for skilled worker, minimum wage is Rs.9237.85 per month. Accordingly, in the absence of proof of income of the deceased Devi Ram Adhikari, his notional income is taken as Rs.9000/- per month.

Further, record of the case reveals that age of the deceased was determined to be 52 years on the basis of Ex.P4, Post Mortem Report of the deceased. Accordingly, addition of 10% made towards future prospects, and multiplier of 11 have been correctly applied by the Id. Tribunal. As claimants are 5 in number, deduction of 1/4th has been made towards personal expenses. However, in accordance with the law laid down by the Hon'ble Supreme Court in **Pranay Sethi (supra)**, claimants are entitled to only Rs.44,000/- as consortium. Further Rs.16,500/- is granted towards loss of estate and Rs.16,500/- towards funeral expenses.

It may be noted that vide order dated 19.12.2019, this Court had stayed payment of compensation beyond Rs.9.50 lacs.

In view of the discussion hereinabove, compensation admissible to claimants/respondents is reworked in the following manner:-

S.No.	Head	Compensation awarded by the Tribunal (in Rupees)	Compensation reworked in present appeal (in Rupees)
1.	Notional income	11000/- per month	9000/- per month
2.	Future prospects @ 10%	1100/-	900/-
3.	Monthly income	12100/-	9900/-
4.	Multiplier	11	11
5.	Deduction (5 claimants)	1/4 th	1/4 th
6.	Total dependency	12100x12x11x3/4= Rs.11,97,900	9900x12x11x3/4=9,80,100/-
5.	Compensation on account of loss of love and affection to 4 children @ Rs.50,000/- each	2,00,000/-	44,000 x 5= 2,20,000/- (including widow)
6.	Compensation to widow on account of loss of consortium	40,000/-	Nil in view of col. 5 above.
7.	Loss of estate	15,000/-	16,500/-
8.	Funeral expenses	15,000/-	16,500/-
9.	Total.	14,67,900/-(rounded off to Rs.14,68,000/-	12,33,100/-
10.	Difference	2,34,900/-	

Ratio of apportionment, manner of disbursement of compensation, and rate of interest of 7% per annum, as granted by the Id. Tribunal remains unchanged.

Appeal is accordingly, **allowed** in the abovesaid terms.

23/03/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No