IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5294-2016 (O&M)
Date of Decision :13.01.2023

New India Assurance Company Ltd . ...Appellant

Versus

Geeta Devi @ Kavita and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sahej Mahajan, Advocate for
Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Kapish Singla, Advocate for
Mr. Ashit Malik, Advocate for respondents No.1 to 3.

Mr. Rishab Goyal, Advocate for Mr. Deepak Sihota, Advocate for respondent No.4.

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<u>Harsimran Singh Sethi, J. (Oral)</u>

The present appeal has been preferred challenging the award dated 12.05.2016 passed by the Motor Accident Claims Tribunal, Kurukshetra by which, the income of the victim has been assessed on the basis of the wages fixed by the Deputy Commissioner of the district.

The grievance of the appellant is that the wages being fixed by the Deputy Commissioner cannot be a criteria to assess the income of the victim as in case, no cogent evidence with regard to the income of the victim has brought before the tribunal, the only option left with the tribunal is to assess the income on the basis of the minimum wages fixed by the Labour Department, Haryana hence, the award dated 12.05.2016 passed by the tribunal is totally arbitrary and illegal.

Learned counsel for the appellant further argues that assessing the income by taking into account the minimum wages fixed by the Deputy Commissioner alone and by ignoring the wages as per Minimum Wages Act, 1948 is contrary to the settled principle of law settled by the Coordinate Bench of this Court in **FAO No.2110-2016** titled as **Ram General Insurance Company Limited and others vs. Beant Kaur and others** decided on 14.03.2019 according to which judgment in case no cogent evidence come on record to assess the income of the victim, the income is to be assessed in accordance with the Minimum Wages Act, 1948.

Learned counsel for the claimants argues that though, in Ram General Insurance's case (supra), a Coordinate Bench of this Court has held that wages fixed by the Minimum Wages Act, 1948 will have preference over the minimum wages fixed by the Deputy Commissioner but a Coordinate Bench of this Court in **FAO-782-2022** titled as **National Insurance Co. Ltd vs. Meena Devi and others** decided on 11.03.2022 has held that minimum wages to be fixed as per the Minimum Wages Act, 1948 cannot be the sole criteria to assess the income of the victim and the computation of the income on the basis of minimum wages rates fixed by the Deputy Commissioner is also a valid criteria and the appeal filed by the Insurance Company raising the said argument was dismissed. Hence, law followed by the tribunal for computation of income of the victim on the basis of minimum wages rates fixed by the Deputy Commissioner in the present case is in consonance with the judgement of this Court in Meena Devi (supra) hence, needs to be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question which has been posed before this Court is whether minimum wages fixed by the Deputy Commissioner is to be considered for assessing the income of the victim or minimum wages as per the Minimum Wages Act, 1948 is the sole criteria to be taken into account for assessing the income of the victim so as to award compensation to the claimants.

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 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 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 **Shri Ram General Insurance (supra)**, the said judgment has already been considered by a Coordinate Bench of this Court 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 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.

Keeping in view the fact that a Coordinate Bench of this Court has allowed the benefit of assessment of income on the basis of minimum wages fixed by the Deputy Commissioner as valid action in Meena Devi (supra), no grievance can be made by the appellant that only wages as per the Minimum Wages Act, 1948 should have been taken into account to assess the income of the victim and the said argument cannot be accepted and the the same is accordingly rejected.

At this stage learned counsel for the appellant submits that as the victim was found not to be employed but future prospects has been granted @ 50% of the income assessed, which is contrary to the settled principle of law as only 40 % of the income is required to be taken into consideration for future prospects.

Learned counsel for the claimants concedes the said factum and submits that he has no objection in case compensation award is modified to the extent that future prospects are calculated @ 40% of the assessed income but submits that consortium has not been awarded to the claimants as per the settled principle of law which should also be granted.

Learned counsel for the appellant concedes that the claimants are entitled for consortium as per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.2705-2020** titled as **United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others** decided on 30.06.2020, which benefit has not been given by the Tribunal while assessing the compensation hence, the said claim may also be considered by this Court so as to award the same though, the present appeals have been filed by the Insurance Company. Counter claim raised orally by the claimants is being taken into account to assess the entitlement of the claimants so as to avoid multiplicity of the litigation.

Learned counsels for the parties concedes the fact that as per the law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.2705-2020** titled as **United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others** decided on 30.06.2020 claimants are entitled for the grant of benefit of consortium @ Rs.40,000/- which has not been granted to the claimants. Hence, the claimants in the said case are held entitled for consortium @ Rs.40,000/- each as spouse consortium, parental consortium as well as children consortium as per law settled by Hon'ble Supreme Court of India in Satinder Kaur (supra).

Keeping in view the respective submissions of the learned counsel for the parties, the compensation awarded by the tribunal is modified, which is as under:-

Heads	**Awarded**	**Modification**
Income	10,200/- D.C. rate	10,200/- D.C. rate
Future prospects	50%	40%
Dependency	50%	50%
Multiplier	18	18
Compensation	Rs.16,52,400/-	Rs.15,42,240/-
Loss of filial and Parental consortium	---	88,000/-
Last rites	25,000/-	16,500/-
Loss of estate	--	16,500/-
Interest	9%	9%
Total	**Rs.16,77,400/-**	**Rs.16,63,240/-**

No other argument has been raised.

The present appeal stands disposed of in above terms respectively.

January 13, 2023 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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