108 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1118-2018 (O&M)
Date of Decision :13.03.2023

New India Assurance Company Ltd. …Appellant

versus

Reetu and others ….Respondents

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

Present : Mr. Vinod Gupta, Advocate and
Mr. Mayank Gupta, Advocate
for the appellant.

Mr. Sagar Aggarwal, Advocate
for respondent No.1 to 4.

None for respondent No.5.
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B.S. Walia, J. (Oral)

1. Challenge in the appeal by the Insurance Company is to the assessment of income of deceased, Vipin Kumar, as labourer at Rs.10,520/- instead of Rs.8070.44 per month despite notification dated 21.10.2016, issued by the Labour Commissioner, Haryana, under the Minimum Wages Act.

2. Learned counsel for the appellant contends that the learned Motor Accident Claims Tribunal, Karnal, assessed the income of the deceased, Vipin Kumar, aged 27, as a labourer at DC ratesi.e. Rs.10,520/- per month whereas the same ought to have been taken into account @ Rs.8070.44/- per month in view of notification issued under the Minimum Wages Act. No other point has been argued.

3. Learned counsel for respondent No.1 to 4 on the other hand by relying on the decision of a Coordinate Bench of this Court in HDFC ERGO

General Insurance Company Ltd vs Sitara &Ors - FAO No.587 of 2016, decided on 27.01.2016, contends that the Insurance Company is normally permitted to take defences which are permissible under Section 149 of the Motor Vehicles Act and the issue of income cannot be taken to be a ground of appeal besides it is not a case, where the award is in the form of a lottery as the case in hand involves compensation payable to a widow, minor child and old parents of deceased Vipin Kumar who died in the prime of his youth. Relevant extract of the aforementioned decision is reproduced as under:

> *"1. The insurance company is on appeal on an issue of quantum alleging that the Tribunal has assessed the income for a Barber at Rs.8000/- when the income should have been taken only Rs.6200/-. This is hardly an objection which the insurance company could be allowed to take in appeal. The insurance company is normally be permitted to take defences which are possible under Section 149 of the Motor Vehicles Act and the issue of income could hardly be a ground of appeal. It is also taken as a ground in many cases only because the Court would require to examine if the award made is far beyond the amounts comprehensible and the award itself is seen as a lottery. Here the case of death of a male aged 27 years and the claimants were young widow and three minor children. If the Tribunal has taken the DC rates for assessing the loss of dependence and not rate as fixed by the Labour Commissioner, I will not find that to be off the mark to make an intervention."*

3. Learned Counsel also relies on the decision in **National Insurance Company Ltd. Versus Meena Devi and others Law Finder Doc Id # 1975439**, whereina Coordinate Bench of this Court rejected 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-in chief 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.*
> *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 at least 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."*

Learned Counsel contends that Hon'ble the Supreme Court vide order dated 04.08.2022 dismissed SLP (C) Nos. 12963 / 2022 in case titled as National Insurance Co. Ltd vs Meena Devi & others.

[6] Reliance has also been placed by learned counsel on the decision in case **titled as Oriental Insurance Company Limited versus Jannati and others- FAO No.631 of 2022 decided on 24.08.2022,** 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 **FAO No.3584 of 2022 in case titled as United India Insurance Company Limited versus Amarjit and others decided on 26.08.2022**whereinincome of the deceased assessed @ ₹14,610/-, on the basis of rates fixed by the Deputy Collector, District Karnal was upheld by this Court by holding that the Tribunal was not bound to accept the minimum wages notified by the Labour Commissioner and the Tribunal was required to analyze the evidence. SLP against decision of this Court was dismissed 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.

3. Learned Counsel for respondent No.1 to 4 further contends that the Tribunal erred in not awarding loss of consortium to the minor daughter and parents of the deceased in view of the decision of Hon'ble the Supreme Court in **Magma General Insurance Co. Ltd'scase(Supra)** besides in view of the decision in **R.K. Malik and another versus Kiran Pal and others, Law Finder Doc ID #196240,** the respondents/claimants are entitled to award of interest @ 7.5% instead of 6% awarded by the Tribunal.

5. I have considered the submissions of learned counsel and perused the record.

6. Admittedly, the deceased was 27 years of age and died in the prime of his youth leaving behind a young widow, a one year olddaughter

besides old parents. As per the judgments noticed above, assessment of income of deceased as per rates notified under the Minimum Wages Act, 1948 is not mandatory and the same can at best be treated as a guiding factor. SLP's against the decision's in **Meena Devi and Amarjit and others** (Supra) were dismissed by Hon'ble the Supreme Court. Further, despite entitlement of spouse, minor daughter and old parents to compensation on account of loss of consortium,only the widow was awarded Rs.40,000/- towards loss of spousal consortium. However, even the minor daughter besides parents are entitled to loss of parental and filial consortium @ Rs.40,000/- each in view of the decision in **Magma General Insurance Co. Ltd's case (Supra)**.Besides in view of the decision in **R.K. Malik and another's case (Supra)**the respondents / claimants are entitled to award of interest @ 7.5% instead of 6% awarded by the Tribunal.

7. Accordingly, in the light of the position noted above, award passed by the Tribunal as has been challenged by the Insurance Company by way of the instant appeal does not warrant any intervention by this Court. However, in view of the provisions of Order 41 Rule 33 of CPC, Court's are bound to award just compensation. Accordingly, the minor child and old parents are also held entitled to award of Rs.40,000/- each on account of loss of parental/filial consortium besides interest payable on the compensation awarded is enhanced from 6 % per annum to @7.5% per annum. Accordingly, the appeal filed by the Insurance Company is dismissed while the award is modified in favour of the respondent's-claimants and they are held entitled to compensation as per modification to the award. Payment be accordingly made to the respondents in proportion to the ratio as ordered by the Tribunal, less

payment, if any already made. Appeal dismissed with the modification to the award in favour of the respondents / claimants as above.

(B.S. Walia)
Judge

13.03.2023
rajesh

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