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

**FAO-5486-2022 (O&M)
Date of Decision :13.01.2023**

Tata AIG General Insurance Co. Ltd **...Appellant**

Versus

Savita and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjeev Kodan, Advocate for the appellant

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Harsimran Singh Sethi, J. (Oral)

The present appeal has been preferred challenging the award dated 24.08.2022 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 24.08.2022 passed by the tribunal is totally arbitrary and illegal.

Learned counsel for the appellant further argues that taking into account the minimum wages fixed by the Deputy Commissioner alone 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 Minimum Wages Act, 1948 will have preference over the minimum wages fixed by the Deputy Commissioner but subsequently a Coordinate Bench of this Court in **FAO-782-2022** titled as **National Insurance Co. Ltd vs. Meena Devi and others** by noticing the judgment in Ram General Insurance (supra) decided on 11.03.2022 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 valid and the appeal filed by the Insurance Company 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 cases should 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 alone can be taken into account for assessing the income of the victim or minimum wages as per the Minimum Wages Act, 1948 needs 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 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)."

Hon'ble Supreme Court of India held that Minimum Wages Act, 1948 alone cannot be taken into account 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 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.

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.
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> 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 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 by the Deputy Commissioner as valid in Meena Devi (supra), no grievance can be made by the appellant that only Minimum Wages Act, 1948 should have been taken into account to assess the income of the victim cannot be accepted and the the same is accordingly rejected.

Learned counsel for the appellant raised another ground with regard to the involvement of the vehicle in question. Learned counsel for the appellant concedes that an evidence has already come on record vide testimony of one Sandeep that he was witness to the said accident. Learned counsel for the appellant submits that the said testimony needs to be discarded as the same does not aspire confidence, keeping in view the certain facts that as per the testimony of the said Sandeep, he accompanied the victim to the hospital whereas, as per the hospital record, police official had brought the victim to the hospital.

The said argument cannot be accepted to disbelieve the testimony of the said Sandeep as his name was not mentioned in the record of the hospital to be accompanied with the victim and brought the victim to the hospital. There can be a possibility that more than one person accompanied the victim to the hospital and only name of a particular person was noted in the hospital concerned. It is a beneficial legislation and the strict rules of the evidence does not apply in Motor Accident claims hence, once a particular evidence has come on record which has been accepted by the tribunal, this Court will not like to interfere in the said findings hence, the said argument of the appellant is rejected and the appeal is accordingly dismissed.

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

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