

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. **FAO-5166-2018 (O&M)**
Date of decision : 19.04.2024

Cholamandlam MS General Insurance Co. Ltd ... Appellant(s)
Versus
Bimla Devi & Ors. ... Respondent(s)

2. **FAO-6426-2018 (O&M)**

Bimla Devi & Anr ... Appellant(s)
Versus
Ombir & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjeev K. Arora, Advocate
for the appellant-Insurance Company in FAO-5166-2018 and
for respondent No.3-Insurance Company in FAO-6426-2018.

Mr. Yogesh Gupta, Advocate
for respondent Nos.1 and 2/claimants in FAO-5166-2018 and
for the appellants/claimants in FAO-6426-2018.

Service of respondent Nos.3 and 4 in FAO-5166-2018
dispensed with vide order dated 14.09.2018.

ALKA SARIN, J. (ORAL)

1. The present order shall dispose off both the above-captioned
appeals - one being **FAO-5166-2018** filed by the Insurance Company
challenging the quantum of compensation awarded by the Motor Accident
Claims Tribunal, Narnaul (hereinafter referred to as ‘Tribunal’) vide award
dated 26.04.2018 and second being **FAO-6426-2018** filed by the claimants
for enhancement of compensation.

2. Learned counsel for the Insurance Company would contend that the deceased in the present case was a bachelor and 24 years of age and hence deduction ought to have been 50% instead of 1/3rd as applied by the Tribunal. It is further the contention of the learned counsel for the Insurance Company that the income of the deceased ought to have been assessed as per the Minimum Wages Act, 1948.

3. Per contra, the learned counsel for the claimants would contend that the income of the deceased has rightly been assessed by the Tribunal as Rs.11,840/- per month keeping in view the fact that the deceased was 24 years of age at the time of the accident and had completed his BA (Bachelor of Arts) and he had a bright future ahead. It is further the contention of the learned counsel that deduction of 1/3rd as well as multiplier of '18' has also rightly been applied. However, no addition has been made towards future prospects which ought to have been 40% keeping in view the age of the deceased being 24 years. It is further the contention of the learned counsel that no amount has been awarded under the head 'loss of consortium' and further that the amount awarded under the conventional heads is also not in consonance with the judgments of the Hon'ble Supreme Court. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

4. I have heard the learned counsel for the parties.
5. In the present case the Tribunal had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.11,840/-
2	Annual Income	[Rs.11,840x12]=Rs.1,42,080/-
3	Deduction 1/3 rd	[Rs.1,42,080-47,360]=Rs.94,720/-
4	Multiplier - 18	[Rs.94,720x18]=Rs.17,04,960/-
5	Loss of estate	Rs.15,000/-
6	Funeral expenses	Rs.15,000/-
7	Total Compensation	Rs.17,34,960/-
	Interest	9%

6. The argument of the learned counsel for the Insurance Company that the income ought to have been assessed as per the Minimum Wages Act, 1948 deserves to be rejected. In the case of **Shri Ram General Insurance Company Ltd. & Ors. vs. Beant Kaur & Ors. [2019 (3) SCT 684]** a detailed discussion has been made on the applicability of the minimum wages prescribed as per the Minimum Wages Act, 1948 as well as the case law applicable thereto. In para 15 it has been held as under :

“15. It has been held in a plethora of judgements by the Hon'ble Supreme Court that it is the duty of the tribunal/Court to award 'just compensation'. Motor Vehicles Act is admittedly a beneficial legislation, therefore to circumscribe the scope of assessment of income of the deceased/injured to the minimum wages as may be notified under the Minimum Wages Act would

not be justified. Needless to say, assessment of income in cases where no specific documentary evidence is led in support of the claim, such assessment would be dependent upon the facts and circumstances of each case. There may be instances where oral evidence alongwith other supporting evidence on record may inspire confidence. There has to be a sound evaluation of the oral evidence and supporting circumstances in the factual matrix of each particular case. The Tribunal/Court while keeping in view the minimum wage fixed under the Minimum Wages Act as the basic criterion at the outset would proceed to determine whether income of the deceased/injured is to be assessed at any higher level keeping in view the evidence on record. This in my considered view, would be the correct approach to follow in such cases.”

7. Hon’ble Supreme Court in the case of **Jakir Hussein vs. Sabir & Ors. [2015(7) SCC 252]** has held 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).”

8. In the case of **Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited [2011(13) SCC 236]**

Hon’ble Supreme Court has held as under :

“14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our

view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to 150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-."

9. Learned counsel for the Insurance Company has vehemently contended that in the absence of evidence, the rates prescribed under the Minimum Wages Act, 1948 ought to have been applied. However, learned counsel for the Insurance Company has not been able to convince this Court that it is mandatory for the Tribunal to assess the income of the deceased as per the rates prescribed under the Minimum Wages Act, 1948. Further still, the Hon'ble Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. vs. Mukesh Kumar Yadav & Ors. [2021(4) RCR (Civil) 492]** has held that a certain amount of guesswork can be done in motor accident claim cases while assessing the income when there is no definite proof regarding income. Para 10 of the said judgment reads as under:

“10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time

cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., (2013) 10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3rd is to be made from the income of the

deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of '16' the claimants are entitled for compensation of Rs.14,33,664/-. As an amount of Rs.10,99,700/- is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/-. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors., 2018 SCC OnLine SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental consortium of Rs.40,000/-each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited, (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record.”

10. 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.

The compensation should be just in order to adequately restore the claimants to the position prior to the accident. In the present case, the deceased was a 24 years' young boy and had completed his BA, he had a bright future ahead. The deceased leaves behind his parents and as per the evidence on the record his father is a patient of Asthma and is not working. 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. Accordingly, the argument of the learned counsel for the Insurance Company that the income ought to have been assessed as per the Minimum Wages Act, 1948 stands rejected and income of the deceased as assessed by the Tribunal i.e. Rs.11,840/- per month is maintained.

11. The argument of the learned counsel for the Insurance Company that deduction to the extent of 50% ought to have been applied is accepted as the deceased in the present case was a bachelor. The argument of the learned counsel for the claimants that no amount has been awarded towards future prospects as well as under the head 'loss of consortium' and that the amount awarded under the conventional heads is also on the lower side also deserves to be accepted. Accordingly, as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra) and **Magma General Insurance Company Limited** (supra), 40% addition is made towards future prospects and the amount awarded under the conventional heads is also reworked out and hence the claimants would be entitled to

Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and the claimants, who are the parents of the deceased would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium. The component of interest as awarded by the Tribunal @ 9% per annum as well as apportionment of amount of compensation amongst the claimants shall remain same. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.11,840/-
2	Annual Income	[Rs.11,840x12]=Rs.1,42,080/-
3	Deduction 50%	[Rs.1,42,080-71,040]=Rs.71,040/-
4	Future Prospects - 40%	[Rs.71,040+28,416]=Rs.99,456/-
5	Multiplier - 18	[Rs.99,456x18]=Rs.17,90,208/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Filial	[Rs.48,000/-x2] =Rs.96,000/-
9	Total Compensation	Rs.19,22,208/-

12. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 9% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimants as directed by the Tribunal.

13. In view of the above discussion, the impugned award passed by the Tribunal is modified and both the appeals i.e. **FAO-5166-2018** filed by the Insurance Company and **FAO-6426-2018** filed by the claimants stand disposed off. Pending applications, if any, also stand disposed off.

19.04.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO