

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

FAO-1176-2024 (O&M)

Reserved on : 18.03.2024

Date of Decision : 01.04.2024

The New India Assurance Company Limited

....Appellant

Versus

Pinki and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Deepak Suri, Advocate for the appellant.

Mr. Parveen Sharma, Advocate
for the caveator-respondent No.1.

ALKA SARIN, J.

CM-4693-2024

For the reasons mentioned in the application, the same is allowed. The delay of 70 days in refiling the appeal is condoned. CM stands disposed off.

FAO-1176-2024

1. The present appeal has been preferred by the Insurance Company aggrieved by the award dated 28.08.2023 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal').

2. The brief facts relevant to the present case are that on the night of 23.06.2020 a medical ruqa was received from the Police Post, Kalpana Chawla Govt. Medical College and Hospital, Karnal regarding the admission of Ajay son of Pappy and Parveen son of Prabhu, both residents of village Ganjo Garhi, due to the injuries received in a roadside accident. On

FAO-1176-2024

24.06.2020 ASI Parveen Kumar alongwith Constable Pawan Kumar reached the Police Post KCGMCH, Karnal and collected the medical ruqa. Parveen Kumar was opined to be fit make a statement. The complainant, Parveen Kumar, disclosed that on 23.06.2020 he and his cousin Ajay son of Pappy were going to village Ganjo Garhi on a motorcycle bearing registration No.HR-05-AB-6637 Bajaj CD 100, the rider of which was Ajay who was riding the motorcycle on the left side of the road at a moderate speed at about 7:00 PM. When they reached near Dera Buta Singh at Ranwar-Ganjo Garhi Road, a Tractor attached with a bull-cart (Buggi), which was being driven in a rash and negligent manner, came from the opposite side and hit the motorcycle. As a result of the accident, Ajay fell on the road and received multiple and grievous injuries. The driver of the offending Tractor stopped and came near them, however, since lot of people gathered, he fled from the spot alongwith the tractor. The number of the offending Tractor was noted as HR-05-BB-9002 and it was stated that he could also identify the driver of the offending Tractor. Ajay succumbed to his injuries in the hospital. On the basis of his statement, FIR No.171 dated 24.06.2020 was registered under Sections 279, 304-A, 337 IPC at Police Station Madhuban, Karnal. On the basis of the same set of allegations a claim petition was filed by the legal representatives of Ajay. Notice of the petition was issued. The driver of the offending vehicle denied the factum of the accident and submitted that a false FIR had been registered against him. The owner of the offending Tractor filed a separate written statement and stated that he had falsely been implicated in the case. The appellant-Insurance Company filed a written statement admitting the fact of issuance

of the insurance policy, however, it denied the factum of the accident and took the plea of mis-joinder and non-joinder of necessary parties as well as the plea of violation of terms and conditions of the insurance policy on the ground that the driver of the offending vehicle did not have a valid and effective driving licence. On the basis of the pleadings the following issues were framed :

- “1. Whether the accident in question resulting into the death of Ajay took place due to rash and negligent driving of offending vehicle bearing No.HR-05-BB-9002 by its driver, as alleged ? OPP
- 2 If issue No.1 is proved in affirmative, what amount of compensation, petitioners are entitled to and from whom ? OPP
- 3 Whether the vehicle in question was being driven in violation of the terms and conditions of the Insurance Policy and/or provisions of the Motor Vehicle Act ? OPR(3)
- 4 Relief.”

3. The Tribunal awarded the following compensation:

Sr.No.	Heads	Calculation
1.	Income	Rs.15,340/-
2.	40% of income to be added as future prospects	Rs.21,476/- (15340 + 6136)
3.	Deduction – 1/4 th	Rs.16,107/- (21476 - 5369)
4.	Annual income	Rs.1,93,284/- (16107 x 12)
5.	Multiplier – 18	Rs.34,79,112/- (193284 x 18)
6.	Loss of estate	Rs.15,000/-
7.	Loss of consortium for widow	Rs.40,000/-
8.	Funeral expenses	Rs.15,000/-
	Total Compensation	Rs.35,49,112/-

4. Aggrieved by the same, the present appeal has been preferred by the appellant-Insurance Company.

5. Learned counsel appearing on behalf of the appellant-Insurance Company would contend that the present was a case of contributory negligence and that the accident occurred in the middle of the road. It is further the contention that while assessing the income of the deceased the same has been done as per the Deputy Commissioner rate in the area for the year 2020. It is further the contention that the same ought to have been assessed as per the minimum wages fixed by the State Government.

6. I have heard the learned counsel for the parties.

7. In the present case though an argument has been raised regarding contributory negligence, however, a perusal of the award reveals that the said plea was not raised before the Tribunal nor was any argument raised regarding the factum of contributory negligence. For the first time the issue of contributory negligence has been raised before this Court. In view of the fact that neither the plea was raised before the Tribunal nor any evidence was led qua the same, the said argument is rejected. The second argument of the learned counsel that the income of the deceased ought to have been assessed as per the minimum wages and not as per the Deputy Commissioner rate also deserves to be rejected. The Tribunal while passing the award had relied upon the judgment of this Court in *National Insurance Company Limited vs. Meena Devi & Ors.* [FAO-782-2022 decided on 11.03.2022] wherein the income was assessed on the basis of the DC rates rather than the minimum wages. The said judgement dated 11.03.2022 was

challenged by the Insurance Company before the Hon'ble Supreme Court by filing SLP No.12963 of 2022. The said SLP was dismissed vide order dated 04.08.2022 by the Hon'ble Supreme Court.

8. 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.”

9. 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).”

10. 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/-.”

11. In the present case the deceased was 23 years of age. The widow is also 23 years old with two minor children. The deceased also left behind his parents. The wife of the deceased had stepped into the witness box and had specifically stated that her husband was working as a Mason. 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.”

12. No doubt minimum wages notification is a yardstick which is often used, however, the same cannot be the only factor to determine the compensation payable to the claimants. 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 so as to ensure that the claimants are adequately restored to the position prior to the accident. The young widow of the deceased is 23 years of age and the minor children have their whole life ahead of them, their formal education, if started at all, would be at the very initial stage. The compensation cannot in any manner compensate them for the loss suffered by them because of the untimely death of the deceased, however, the amount should be adequate to mitigate the financial difficulties the family is likely to face.

13. Keeping in view of the peculiar circumstances, especially the fact that the widow is herself 23 years old and the children are at a very tender age with their whole life ahead of them, as also that there is no mandate of law to only apply the rates as prescribed under the Minimum Wages Act, 1948 and at best it can be only used as a yardstick, this Court

does not deem it appropriate to interfere in the award passed by the Tribunal.

The present appeal being devoid of any merit is accordingly dismissed.

Pending miscellaneous applications, if any, also stand disposed off.

01.04.2024
Ankur

(ALKA SARIN)
JUDGE

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