

2022 PLRonline 0598

(#419605)

PUNJAB AND HARYANA HIGH COURT

Before : Justice Alka Sarin.

National Insurance Company Ltd. v. Meena Devi

FAO-782 of 2022 (O&M)

11.03.2022

Motor Vehicles Act, 1988 (59 of 1988) - Minimum Wages Act, 1948 - Tribunal while assessing the income of the deceased has applied the rates as prescribed by the Deputy Commissioner rather than the rates prescribed by the Labour Commissioner - Minimum wage notification is merely a yardstick and not an absolute factor to be taken to determine the compensation payable to the claimants - There is no mandate of law to only apply the rates as prescribed under the Minimum Wages Act, 1948.

Motor Vehicles Act, 1988 (59 of 1988) - Compensation - 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 - 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 - 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 - Minimum Wages Act, 1948.

Cases Referred :-

1. *Jakir Hussein v. Sabir. 2015 (7) SCC 252*
2. *New India Assurance Company Ltd. v. Smt. Surti Devi. FAO No.3239 of 2016 decided on 29.05.2018.*
3. *Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited. 2011 (13) SCC 236*
4. *Shri Ram General Insurance Company Ltd. v. Beant Kaur. 2019 (3) SCT 684*

For the appellant:- Mr. Gopal Mittal. For the caveator-Respondent Nos. 1 to 4:- Mr. Rajiv Kumar Saini.

JUDGMENT

Mrs. Alka Sarin, J. (Oral) - Heard in virtual mode.

2. The present appeal has been preferred by the Insurance Company challenging the Award dated 05.10.2021 passed by the Motor Accident Claims Tribunal, Karnal (in short the 'Tribunal') on the ground that the Tribunal while assessing the income of the deceased has applied the rates as prescribed by the Deputy Commissioner, Karnal rather than the rates prescribed by the Labour Commissioner. Learned counsel for the appellant has relied upon the judgment of this Court passed in **FAO No.3239 of 2016 titled "New India Assurance Company Ltd. v. Smt. Surti Devi & Ors."** decided on 29.05.2018.

3. Appearance has been put in on behalf of the contesting respondent Nos.1 to 4 by Mr. Rajiv Kumar Saini, Advocate who has contended that there is no bar in applying the rates prescribed by the Deputy Commissioner, Karnal and the minimum wages as per the Minimum Wages Act, 1948 can at best serve as a yardstick. In order to buttress his arguments, he has relied upon the judgment passed by this Court in **"Shri Ram General Insurance Company Ltd. & Ors. v. Beant Kaur & Ors."** [2019 (3) SCT 684].

4. Heard.

5. The sole ground for challenge in the present appeal is that while assessing the income of the deceased the Tribunal has applied the rates prescribed by the Deputy Commissioner, Karnal rather than the rates prescribed as per the Minimum Wages Act, 1948. In the judgment relied upon by learned counsel for the appellant, no law point has been decided, however, it has been held in passing that the DC rates ought not to have been applied since the DC rates are meant for the payment of wages out of the contingency and the same cannot be a guiding factor for assessment of the compensation.

6. In the present case, the brief facts relevant to the present lis are that eye-witness/complainant, Sohan Lal, disclosed that on 13.07.2019 he along with his brother-in-law Balwinder son of Raj Kumar were going from Nigdhu to the house of sister of Balwinder situated at Village Mugal Majra on motorcycle bearing registration No.HR-05AL-7222. At about 10.00 A.M., when they reached near village Bara Gaon, the complainant saw that the offending motorcycle, which was being driven rashly and negligently, come from the front side and hit their motorcycle. As a result of the accident Balwinder fell from the motorcycle and sustained grievous injuries. At the General Hospital Karnal, Balwinder Singh was declared brought dead. On the basis of the said statement, FIR No.196 dated 13.07.2019 under Sections 279, 337 and 304A of the Indian Penal Code, 1860 was registered at Police Station Kunjpura. In the claim petition filed by the claimants/respondent Nos.1 to 4 it was stated that the deceased at the time of the accident was 27 years of age and he was working as a Mason and earning 20,000/- per month. It was further stated that the deceased was contributing his entire income for his family and due to the untimely death of the deceased the claimants had not only suffered financial depravity but had also suffered loss of his love and affection. It was further claimed that an amount of 50,000/- was spent on the last rites of the deceased.

7. Respondent No.5 herein, the driver and owner of the offending vehicle, filed his written statement denying that the accident ever took place. It was further stated that in case it was found that he was liable to pay compensation, then the Insurance Company should be

made liable since the offending vehicle was insured. The appellant-insurance company filed its written statement and admitted the insurance policy in respect of the offending vehicle. However, it was contended that the driver did not have a valid and effective Driving License. It was further stated that the claim petition was filed in collusion with the police and driver of the vehicle to grab the compensation from the insurance company.

8. On the basis of the evidence and pleadings of the parties, the Tribunal awarded compensation to the tune of 31,99,360/- along with interest @ 7% per annum from the date of the petition till realization. The Tribunal while assessing the income of the deceased applied the rates as prescribed by the Deputy Commissioner, Karnal at the time of accident i.e. 14,610/-.

9. The only ground on which the said award is being challenged by the appellant-insurance company is that instead of assessing the compensation on the basis of the rates prescribed under the Minimum Wages Act, 1948, the income had been assessed on the basis of the rates prescribed by the Deputy Commissioner, Karnal.

10. In the case of *Shri Ram General Insurance Company Limited's* case (supra), 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."

11. Hon'ble Supreme Court in the case of **"Jakir Hussein v. 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 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 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 150/- per day (4,500/- per month i.e. 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 51,000/- for a period of one year and five months. We have to enhance the same to 76,500/- (4,500 X 17 months)."

12. In the case of **"Ramachandrappa v. 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/-."

13. Learned counsel for the appellant-insurance company has vehemently contended that the income has to be assessed, in the absence of the evidence, on the basis of the rates prescribed under the Minimum Wages Act, 1948. However, learned counsel for the appellant-insurance company has not been able to show any law in this respect which

makes it mandatory for the Tribunal to assess the income as per the rates prescribed under the Minimum Wages Act, 1948.

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 atleast 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.

18. Dismissed.