(2018) 08 P&H CK 0479

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 3964 Of 2018 (O&M)

National Insurance Company Ltd. — APPELLANT

Vs

Ms. Rabjiri And Others — RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Citation : (2018) 08 P&H CK 0479

Hon'ble Judges : B.S. Walia, J

Bench : Single Bench

Advocate : R.C. Gupta, R.K. Saini

Final Decision : Allowed

Judgement

B.S. Walia, J

1. Appeal has been filed challenging the award passed by the learned Motor Accidents Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal) dated 03.04.2018 on the short ground that in terms of decision of Hon'ble the Supreme Court in Govind Yadav versus The New India Insurance company Limited 2011 (4) RCR (Civil) 817 as well as decision of this Court in FAO No.2377 of 2017 (National Insurance Company Limited versus Jameet Ram and others) decided on 25.04.2018 where monthly income of the deceased could not be proved on file, income is to be assessed on the basis of minimum wages payable to the worker at the relevant time.

2. It is further the plea of the appellant that the minimum wages at the relevant point of time was `8280/- per month and not `10,520/- as assessed by the learned Tribunal and that `10,520/- per month was the wages payable as per D.C.

Rates and not as per the minimum wages.

3. Learned counsel for the appellant contends that in the circumstances, compensation payable to the respondent-claimants works out to `9,57,692/- and

not `12,15,700/-.

4. Notice of motion was issued on 16.07.2018 on the aforementioned limited aspect of the matter for final disposal on 27.8.2018.

5. Mr. Rajiv Kumar Saini, Advocate, has put in appearance on behalf of respondent-claimant Nos.1 to 6 i.e. contesting respondents.

6. Learned counsel for the appellant states that LRs of respondent No.7 are not necessary in the present claim petition so, their service may be dispensed with.

7. Ordered accordingly.

8. Learned counsel for respondent Nos.1 to 6 has fairly conceded that in view of decision of Hon'ble the Supreme Court in Govind Yadav's case (supra) as well as decision of this Court in Jameet Ram's case (supra) in view of failure to prove the monthly income of the deceased on file, income has to be assessed on the basis of minimum wages payable to a worker at the relevant time and that wages payable to an unskilled worker at the relevant time was `8280/- per month. Paragraph No.17 of the decision in Govind Yadav's case (supra) which is relevant to the point in issue is reproduced as under:

"17. A brief recapitulation of the facts shows that in the petition filed by him for award of compensation, the appellant had pleaded that at the time of accident he was working as Helper and was getting salary of Rs.4,000/- per month. The Tribunal discarded his claim on the premise that no evidence was produced by him to prove the factum of employment and payment of salary by the employer. The Tribunal then proceeded to determine the amount of compensation in lieu of loss of earning by assuming the appellant's income to be Rs.15,000/- per annum. On his part, the learned Single Judge of the High Court assumed that while working as a Cleaner, the appellant may have been earning Rs.2,000/- per month and accordingly assessed the compensation under the first head. Unfortunately, both the Tribunal and the High Court overlooked that at the relevant time minimum wages payable to a worker were Rs.3,000/- per month. Therefore, in the absence of other cogent evidence, the Tribunal and the High Court should have determined the amount of compensation in lieu of loss of earning by taking the appellant's notional annual income as Rs.36,000/- and the loss of earning on account of 70% permanent disability as Rs.25,200/- per annum.

The application of multiplier of 17 by the Tribunal, which was approved by the High Court will have to be treated as erroneous in view of the judgment in Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121. In para 42 of that judgment, the Court has indicated that if the age of the victim of an accident is 24 years, then the appropriate multiplier would be 18. By applying that multiplier, we hold that the compensation payable to the appellant in lieu of the loss of earning would be Rs.4,53,600/-."

9. Learned counsel for respondent Nos.1 to 6 states that although he does not

dispute the assessment of income @ `8280/- per month as the minimum wages payable to the deceased during the relevant period yet interest awarded @ 6% was on the lower side and is liable to be enhanced to minimum of 9% in view of the decision in Sube Singh and anr. Versus Shyam Singh (Dead) and ors. 2018(2) RCR (Civil) 131.

10. Although accident in Sube Singh's case (supra) had occurred in the year 2009, Hon'ble the Supreme Court had awarded interest @ 9% yet taking into account the fact that the accident in the instant case took place in December 2016, it would be in the interest of justice if interest is awarded @ 7.5 % i.e the rate as is claimed by the learned counsel for the parties as being RBI rate applicable during the relevant period.

11. Accordingly, in the light of the decision of Hon'ble the Supreme Court in Govind Yadav's case (supra), compensation shall be worked out on the basis of minimum wages payable to a worker for the relevant period. Accident in the instant case took place on 18.12.2016 at Karnal. As per notification dated 5.4.2016 issued by the Labour Commissioner, Haryana, minimum wages in case of an unskilled worker for the relevant period are `8280/- per month. Accordingly, compensation in the instant case will be worked out on the basis of monthly income of the deceased at `8280/- and not `10,520/- i.e. the D.C. rates payable. Thus, computed compensation payable works out as under:

Sr. No.

Head

Amount assessed by Tribunal in `

Amount assessed by this Court in `

1

Income

10520/-

8280/-

2

Future prospects

10%=1052

10%=828

4

Deduction towards personal expenses of deceased.

1/4th of total income =2893/-

1/4th of total income =2277/-

5

Dependency arrived at

8679/-

6831/-

6

Multiplier applied

11

11

7

Compensation awarded

8679x12x11 = 11,45,628/-

6831x12x11 = 9,01,692/-

8

Loss of consortium Loss of Estate Funeral expenses

70,000/-

70,000/-

Total

12,15,628/-

9,71,692/-

12. Accordingly, as against compensation of Rs.12,15,628/- rounded of to `12,15,700/-, respondent-claimant Nos.1 to 6 are held entitled to award of compensation of `9,71,692/- alongwith interest @ 7.5 % per annum with effect from the date of claim petition till date of realisation, less amount if any already paid.

13. Accordingly, appeal is allowed. Award dated 03.04.2018 passed by the learned MACT, Karnal is modified to the extent as noted above.