



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 10th DAY OF AUGUST 2022

BEFORE

HON'BLE MS. JUSTICE JYOTSNA REWAL DUA

FIRST APPEAL FROM ORDER NO. 58 OF 2022

Between:-

**UNITED INDIA INSURANCE COMPLANY LTD.,
MICRO OFFICE BANUR, NOW THROUGH
ITS DIVISIONAL MANAGER,
DIVISIONAL OFFICE, TIMBERHOUSE
SHIMLA-1.**

.....APPELLANT

(BY DR. LALIT KUMAR SHARMA, ADVOCATE)

AND

1. SMT. SUMNA DEVI WIFE OF SH. DEV RAJ,

**2. DURGA RAM
SON OF SH. MAREHU RAM
DECEASED THROUGH LRS**

**A) SMT. AMRATI DEVI
WIDOW OF SH. DURGA RAM**

**B) SMT. SAROJ KUMARI
DAUGHTER OF SH. DURGA RAM**

**C) SMT. PREM LATA
DAUGHTER OF SH. DURGA RAM**

- D) **SMT. SUSHMA KUMARI**
DAUGHTER OF SH. DURGA RAM
- E) **SH. RAJKUMAR SON OF SH. DURGA RAM**
- F) **SH. SUNIL KUMAR SON OF SH. DURGA RAM**

3. **SH. YOGESH KUMAR SON OF LATE SH. SITA**
RAM

.....**RESPONDENTS**

(BY SH. AJAY KUMAR DHIMAN,
ADVOCATE, FOR R-1)

*This appeal coming on for admission this day, the
Court delivered the following:*

J U D G M E N T

One Shri Vishal Kumar lost his life in a motor vehicle accident on 3.3.2016. His mother-Smt. Sumna Devi instituted a petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs. 50,00,000/- on account of death of her son. The claimant pleaded that Vishal Kumar was aged 20 years and 11 months at the time of the accident. He

had done a diploma course in Mechanic Motor Vehicle Trade from Government Industrial Training Institute, Chirgaon, District Shimla. He was also carrying on the agricultural works over the land owned by his family etc. He was earning Rs. 10,000/- per month.

2. Learned Motor Accidents Claims Tribunal in its award dated 20.1.2022 held that Vishal Kumar died on account of rash and negligent driving of the vehicle by respondent No. 3 Yogesh Kumar. His monthly income was ascertained at Rs. 10,000/-. After deducting 50% of this amount towards deceased's personal and living expenses, dependency of the claimant was worked out at Rs. 5000/- per month. 40% increase i.e. by Rs. 2000/- was added to the monthly loss of income of the dependent/claimant in view of Hon'ble Supreme Court's judgment in *National Insurance company Ltd. vs. Pranay Sethi, (2017), 16 SCC 680*. The deceased was held to be aged about 21 years on the date of accident. The learned Tribunal also observed in the award that the deceased had completed two years National Council for Vocational Training (NCVT) course in Mechanic (Motor Vehicle) trade in session August 2013 to July 2015. Learned Tribunal concluded that the deceased would

have taken atleast 3-4 years before he would start earning. Thus he was considered to be in the age bracket of 15 to 25 years. On that basis multiplier of 18 was applied and the total payable compensation was worked out as under:

Sr. No.	Heads	Calculation
(i)	Dependency	7000/- p.m.
(ii)	Compensation after multiplier of 18 is applied	$7000 \times 12 \times 18 = 15,12,000/-$
(iii)	Loss of Estate with 10% enhancement	16,500/-
(iv)	Transportation	16,500/-
(v)	Loss of Filial consortium to parent	40,000/-
	Total compensation worked out	15,85,000/-

The claimant was accordingly held entitled to compensation of Rs. 15,85,000/- alongwith interest @ 7.5% per annum from the date of filing of the petition till the realization/deposit of the amount. The liability to pay the awarded amount was fastened upon the Insurance company.

3. The aforesaid award has been questioned by the Insurance Company in the instant appeal only on quantum of compensation.

4. I have heard learned counsel for the parties on the quantum of compensation assessed by learned Tribunal. According to the learned counsel for the appellant, learned

Tribunal erred in assessing the notional income of the deceased at Rs. 10,000/- per month. There was no legal and cogent documentary evidence on record to support this assessment of notional income of the deceased. It was further urged that minimum wages in the State of Himachal Pradesh prevailing in the year 2016 when the accident occurred were notified as Rs. 210.70/- per day for the skilled worker. Hence, monthly income of the deceased was wrongly assessed as Rs. 10,000/-, it should have been fixed at around Rs. 7000/-. Reliance in this behalf was placed upon **(2021) 2 SCC 166, (Kirti and Another vs. Oriental Insurance Company Limited)** Learned counsel prayed for allowing the appeal.

Defending the impugned award, learned counsel appearing for the claimant argued that the deceased had completed two year NCVT course in Mechanic (Motor Vehicle) Trade. He would have definitely earned much more than Rs. 10,000/- per month. The deceased was earning Rs. 10,000/- per month only from agricultural pursuits.

5. The mother of the deceased in her claim petition specifically averred that her son Vishal Kumar was earning Rs. 10,000/- per month by doing agricultural works on the landed

property of the family. That he had obtained his Motor Mechanic diploma from Government ITI, Chirgaon, District Shimla. That the deceased was looking for a job and he would have earned much more money had he lived. The appellant-Insurance company in its reply to the claim petition took an objection that documents pertaining to the educational qualification of the deceased had not been furnished by the claimant. The appellant also disputed that deceased was earning Rs. 10,000/- per month.

Insofar as the educational qualification of deceased Vishal Kumar is concerned, it is apt to note the following:-

- i) Shri Vikram Singh and Shri Yogesh Kumar appeared in the witness box as PW3 and RW1. Both of them stated that the deceased had completed his ITI course alongwith them from Government ITI, Chirgaon, District Shimla. No question regarding the diploma obtained by the deceased was put to these two witnesses in their cross-examination conducted on behalf of the appellant.
- ii) The record also shows that documents pertaining to educational qualification of the deceased were placed on record as Mark PA to Mark PK. Mark PA is the National Trade

certificate issued to the deceased on 20.9.2016 (This is after his death in the motor accident on 3.3.2016). As per the said certificate, the deceased had completed the NCVT CTS Course in Mechanic Motor Vehicle trade during the session August 2013 to July 2015. Mark PK issued by the Principal of the Government Industrial Training Institute, Chirgaon, District Shimla is also to the same effect. Though these documents have not been exhibited, however, taking into consideration the benevolent provisions of the Act and the fact that there is no effective and substantive controversion by the appellant in respect of the educational qualification of the deceased, the certificates are required to be read in evidence in the facts of the case. Thus it can be safely held that the deceased was holding two years NCVT CTS diploma in the trade of Mechanic Motor Vehicle in the year 2016.

(iii) Learned Tribunal has assessed the income of the deceased at Rs. 10,000/- per month. In my considered view, this assessment of income in the facts of the case cannot be said to be on the higher side. Not only the deceased was diploma holder in Mechanic Motor Vehicle trade from a Government ITI institution but he was also carrying on

agricultural pursuits on the land owned by his family. According to the learned counsel for the appellant, the minimum wages for the skilled worker in the year 2016 were Rs. 210.70/- per day and income of the deceased should have been assessed on this basis. However, Hon'ble Apex Court in *Kirti's* case supra [(2021) 2 SCC 166] has observed that the court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively nor so liberally so as to make it a bounty to the claimants.

In (2022) 1 SCC 198, titled ***Chandra alias Chanda alias Chandra Ram and Another vs. Mukesh Kumar Yadav And Others***, it was observed that merely because the claimants were unable to produce documentary evidence to show the monthly income of the deceased, the same should not justify adoption of lowest tier of minimum wage while computing the income. The relevant para from the judgment is as under:-

"9. 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 given facts of the case where the deceased had an NCVT CTS course diploma in Mechanic (Motor Vehicle) Trade from a Government Industrial Training Institute and was also carrying out agricultural works, Rs. 10,000/- per month has been correctly assessed as his income which he would have earned on attaining the age of 25 years.

No other point was urged.

For all the aforesaid reasons, I do not find any reason to interfere with the impugned award. Accordingly, the instant appeal is dismissed, so also the pending miscellaneous application(s), if any.

Jyotsna Rewal Dua
Judge

10th August, 2022
(vs)