

slashing the interest as the matter has remain pending before this Court also for no fault of the insurance company.. The oral objection under Order 43 Rule 1 C.P.C of Sri Subhash Chandra Srivastava is accepted. The interest is to be paid from the date of filing of claim petition which is the law and it cannot be from the date the insurance company was impleaded, however, due to passage of long time the said order is disturbed for awarded amount the interest at 7% from filing of the claim petition till the judgment of tribunal and thereafter it would be at 6% on the awarded amount.

11. No other grounds are urged orally when the matter was heard.

12. In view of the above, the appeal is partly allowed. Total compensation of Rs. 2,01,200/- is allowed with interest at 7% from the date of filing of the claim petition till judgment and award of the tribunal and 6% thereafter till amount is deposited. Award and decree passed by the Tribunal shall stand modified to the aforesaid extent. The amount be deposited by the respondent-Insurance Company within a period of 12 weeks from today with interest as directed above. The amount already deposited be deducted from the amount to be deposited.

13. On depositing the amount in the Registry of Tribunal, Registry is directed to first deduct the amount of deficit court fees, if any. Considering the ratio laid down by the Hon'ble Apex Court in the case of **A.V. Padma Vs. Venugopal, Reported in 2012 (1) GLH (SC), 442**, the order of investment is not passed because applicants /claimants are neither illiterate or rustic villagers.

14. Fresh Award be drawn accordingly in the above petition by the tribunal as per

the modification made herein. The Tribunals in the State shall follow the direction of this Court as herein aforementioned as far as disbursement is concerned, it should look into the condition of the litigant and the pendency of the matter and judgment of **A.V. Padma (supra)**. The same is to be applied looking to the facts of each case.

15. The Tribunal shall follow the guidelines issued by the Apex Court in **Bajaj Allianz General Insurance Company Private Ltd. v. Union of India and others** vide order dated 27.1.2022, as the purpose of keeping compensation is to safeguard the interest of the claimants. As long period has elapsed, the amount be deposited in the Saving Account of claimants in Nationalized Bank without F.D.R.

16. Record be sent back to tribunal forthwith.

17. This Court is thankful to both the learned Advocates for ably assisting this Court.

(2023) 5 ILRA 1513

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 06.04.2023

BEFORE

THE HON'BLE AJAY BHANOT, J.

First Appeal From Order No. 944 of 2018

Smt. Meena & Ors. ...Appellants
Versus
U.O.I. & Anr. ...Respondents

Counsel for the Appellants:

Sri Sanjay Kr. Srivastava, Sri Ajay Kr. Srivastava

Counsel for the Respondents:

Sri Arvind Kumar Goswami

A. Motor Accident Claim - Deceased Age - Appellants asserted that the age of the deceased was 19 years at the time of the accident. Original copy of the school leaving certificate of the deceased was produced. PW-1 testified that the age of the deceased was 19 years, which could not be shaken during the cross-examination. School leaving certificate was not impeached by the respondents. Trial Court, however, relied on newspaper cuttings, the F.I.R., and the post-mortem report and recorded that the age of the deceased was 16 years. *Held:* Newspaper reports could not be considered admissible evidence in the facts of the case. The entry in the column of the post-mortem report is not conclusive proof of the age of the deceased. Finding of the Trial Court on the age of the deceased was perverse and liable to be set aside. Age of the deceased was held to be 19 years. (*Para 9, 10, 11, 12*)

B. Motor Accident Claim - Deceased Income - Deceased worked as an employee in an aluminum workshop. Reliable guides to determine income in such cases are the minimum wages notified by the appropriate government from time to time. A worker in an aluminum workshop possesses various skills, often acquired on the job. Workmen in this category may not have formal qualifications, but their technical skills cannot be doubted. It is due to these skills that they render useful work and are retained in establishments. The Court held that the deceased was a perennial workman whose job was of a perennial nature, and he was drawing regular monthly wages. The monthly wages of the deceased were fixed at Rs. 5,000/-. (*Para 21, 22, 23*)

Allowed. (E-5)

(Delivered by Hon'ble Ajay Bhanot, J.)

1. Heard Shri Santosh Kumar Srivastava, learned counsel for the appellants-claimants, Shri Arvind Kumar Goswami, learned counsel representing Union of India.

2. This appeal arises out of the judgment and order dated 25.11.2017 passed by the learned Motor Accident Claims Tribunal/Additional District Judge, Court No.10, Meerut (hereinafter referred to as "Tribunal") in Motor Accident Claim Case No.293 of 2014 awarding a sum of Rs.1,42,000/- as compensation with interest @ 7% annual interest.

3. The learned Tribunal partly allow the claim of the appellants-claimants for the death of one Akib (deceased). The claimants are the legal heirs and dependent of the deceased - Akib, who died in an accident which occurred on 26.2.2014.

4. Shri Santosh Kumar Srivastava, learned counsel for the claimants-appellants contends that the amount awarded by the learned Tribunal is liable to be enhanced. Learned Tribunal recorded the perverse findings as regards the income of the deceased.

5. Shri Arvind Kumar Goswami, learned Central Government Counsel submits that income was correctly determined by the learned tribunal on notional basis since the appellants-claimants failed to prove the income of the deceased.

6. The respondents-Union of India have not challenged the fact of the accident or the liability of the driver. They are only resisting the enhancement in the compensation awarded to the claimants-appellants.

I. Compensation awarded by the learned tribunal:

7. The compensation awarded by the learned tribunal in the impugned judgment dated 25.11.2017 is depicted in a tabulated form hereunder:

Sr. No.	Heads	Amount (in rupees)
1	Monthly Income (A)	1,250/-
2	Annual Income (A x 12 = B)	1,250/- x 12 = 15,000/-
3	Future prospects (C)	50% of 15,000/- = 7,500/-
4	Annual Income + Future Prospects (B + C = D)	15,000+7,500/- =22,500/-
5	Deduction towards Personal Expenses (E)	1/3 of 22,500/- =7,500/-
	Annual Loss of Dependency (F)	7,500/-
6	Multiplier (G)	16
7	Total loss of dependency (F x G = H)	7,500 x 16 =1,20,000/-
8	Conventional Heads: (I) (a) Loss of Love and affection (b) Loss of Mental Pain (c) Funeral	(a) 10,000 + (b) 10,000 + (c) 2,000/- =22,000/-
9	Total compensation (H + I = J)	1,42,000/-
10	Interest	7.00%

8. The issue which arises for consideration in this appeal is that :-

(A) Whether the learned Tribunal had correctly determined the age of the deceased in the record?

(B) Whether the learned Tribunal had correctly determined the income of the deceased or not?

(C) Compensation to which the claimants are entitled.

8(A). Determination of age :-

9. The accident took place on 26.2.2014. The claimants-appellants have asserted in the claim petition that the age of the deceased was 19 years at the time of accident. The original copy of the school leaving certificate of the deceased was produced before the learned Tribunal and marked as paper no. 21C/12. PW-1 - Abid Ali in his testimony before the trial Court had testified that the age of the deceased was 19 years. His statement was consistent with the pleadings in the claim petition as well as in the evidence and in the record. His testimony could not be shaken during the cross-examination. The school leaving certificate was not impeached by the respondents before the learned tribunal. This Court has also examined the school leaving certificate and upon its perusal it appears to be a printed document.

10. The learned Trial Court while finding that the age of the victim of deceased was 16 years as relied on newspaper cuttings, F.I.R. and the post-mortem report. The aforesaid documents do not state the correct age of the deceased. The newspaper reports could not be considered as admissible evidence in the facts of the case. The entry in column of the post-mortem is not conclusive proof of the age of the deceased.

11. The evidence in regard to the age produced by the claimants-appellants is credible and the Court below erred by returning findings to it.

12. This Court finds that the finding of the Court below on the judgment of the age of the victim of deceased is perverse and liable to be set aside. The age of the deceased was 19 years.

8(B). Income of the deceased :-

13. The consistent claim of the claimants-appellants was that the deceased was working as an employee in an aluminum work shop. P.W.1-Abid Ali (father of the deceased) had testified before the Court below that the deceased was working under an aluminum contractor in his establishment. He was drawing a salary of about Rs.9000/- per month.

14. PW-3 - Mehboob, who was the employer of the deceased, also deposed before the learned tribunal that the deceased was an employee in his establishment who was drawing a salary of Rs.8,000/-to Rs.9,000/- per month. Under cross-examination, P.W.3-Mehboob admitted that he did not maintain the workers' register in his establishment.

15. The learned tribunal disbelieved the testimony of PW-1 and PW-3, as regards, the income and employment of the deceased on the footing that PW-3 had admitted that he was not maintaining the register of regular employees in his establishment. The certificate issued by the employee of the deceased contains a recital that the deceased earned Rs.8,000/- to R.9,000/- per month. The said certificate was discarded by the learned tribunal on the footing that the employee had admitted in his cross-examination that he did not maintain a regular register of workman in his establishment.

16. I am afraid the learned tribunal was misdirected in facts and law. The applicant was working in the informal sector of the economy. The aforesaid sector is largely undocumented. It is the common knowledge that in such small establishment

employers often do not maintain regular registers of their employees.

17. The testimonies of P.W.1 and P.W.3, the pleadings and the evidences establish that the deceased was working as a casual workman in the aluminum workshop.

18. The P.W.1 and P.W.3 in their testimonies remained firm as regards the employment of the deceased as a casual worker in the aluminum factory of the P.W.3. On this issue the witnesses could not be shaken under cross-examination.

19. In the wake of the aforesaid depositions of the P.W.1 and P.W.3, pleadings and evidences in the record, this Court finds that the deceased was working as a casual workman in the aluminum workshop of P.W.3.

20. The learned tribunal erred in law by a mechanically applying the notional income of Rs.15,000/- per annum to the facts of this case.

21. The determination of the income in such cases when the employers do not maintain a proper documentation of the employees often a vexed question. However, there are reliable guides to determine income in such cases including the minimum wages notified by the appropriate government from time to time. A worker in an aluminum workshop possesses various skills which are often acquired on the job. The workmen in this category may not have formal qualifications, but their technical skills cannot be doubted. It is on account of these skills that they render useful work and are retained in the establishments.

22. Considering the nature of the work and the testimonies of P.W.1 and P.W.3, this Court can safely conclude that the deceased was a skilled workman whose job was of a perennial nature and he was drawing a regular monthly wages.

23. In the wake of preceding discussion, the monthly wages of the deceased are fixed at Rs.5,000/-.

24. In view of the above, the judgment and order dated 25.11.2017 passed by the learned Motor Accident Claims Tribunal/Additional District Judge, Court No.10, Meerut is set aside and is accordingly modified.

8(C). Determination of Compensation to which claimants-respondents are entitled:

25. In the wake of preceding discussion, the amount of compensation awarded to the claimants is tabulated below:

- i. Date of Accident -26.02.2014
- ii. Date of death -26.02.2014
- iii. Name of the deceased -Akib
- iv. Age of the deceased -19 years
- v. Occupation of the deceased -

Worker in Aluminum Fabrication Establishment

vi. Income of the deceased - Rs.7,000/-

vii. Name, Age and Relationship of claimants with the deceased

Sr. No.	Name	Age	Relation
1	Smt. Meena	43	Mother
2	Abid Ali	45	Father
3	Asif	15	Brother

viii. Computation of Compensation

Sr. No.	Heads	Amount (in rupees)
1	Monthly Income (A)	5,000/-
2	Annual Income (A x 12 = B)	5,000/- x 12 = 60,000/-
3	Future prospects (C)	50% of 60,000/- = 30,000/-
4	Annual Income + Future Prospects (B + C = D)	60,000 + 30,000/- =90,000/-
5	Deduction towards Personal Expenses (E)	1/2 of 90,000/- =45,000/-
	Annual Loss of Dependency (D-E = F)	90,000-45,000/-= 45,000/-
6	Multiplier (G)	18
7	Total loss of dependency (F x G = H)	45,000 x 18 =8,10,000/-
8	Conventional Heads: (I) (a) Loss of Love and affection (b) Loss of Mental Pain (c) Funeral	70,000/-
9	Total compensation (H + I = J)	8,10,000 + 70,000/- =8,80,000/-
10	Interest	7.00%

II. Conclusion and Directions:

26. The amount of compensation to which the claimants-appellants have thus been found entitled shall be deposited by the corporation within three months before the learned tribunal. Thereafter the learned tribunal shall release the amount to the claimants without delay. The amount already disbursed to the claimants (if any) shall be duly adjusted.

27. The instant appeal is partly allowed to the extent indicated above.