



2026:AHC-LKO:20864

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

FIRST APPEAL FROM ORDER No. - 15 of 2016

Om Prakash And Ors.

.....Appellant(s)

Versus

Manager Saket H.P.Mashaudha Petrol Pamp Santosh
Singh And Anr.

.....Respondent(s)

Counsel for Appellant(s)	:	Manoj Sahu, Sonika Sahu
Counsel for Respondent(s)	:	Aditya Tiwari

Court No. - 20

HON'BLE PRASHANT KUMAR, J.

1. A cheque of Rs.20,000/- produced by respondent No.2 in favour of claimants-appellants is taken on record.
2. Heard Shri Manoj Sahu, learned counsel for the appellants and Shri Aditya Tiwari, learned counsel for the respondents and perused the record.
3. The instant appeal has been preferred under Section 30 of the Workmen Compensation Act against the judgment and order dated 03.11.2015 passed by the Workmen Compensation Commissioner/Assistant Commissioner, Faizabad region Faizabad in W.C. Case No.04/2013, whereby the court of Workmen Compensation Commissioner had awarded a compensation of Rs.1,20,000/- and additional Rs.10,000/- for penalty in favour of the claimants-appellants.
4. The factual matrix of the matter is that one Mr. Pawan Kumar was working as a Salesman in the petrol pump owned by respondent No.2 and on 09.04.2012 at around 09:30 pm while he was discharging his duties on the petrol pump, one motor-cyclist came and took petrol and when he was asked for money, the motor-cyclist shot him. He was taken to the hospital where during the course of the treatment he passed away. Thereafter, an F.I.R. was lodged. At that point of time, the respondent No.2 had paid Rs.1,00,000/- to the family of the deceased. When the proper compensation was not paid, the family members of the deceased preferred a claim petition before the court of Workman Compensation Commissioner, Faizabad. The Workmen Compensation Commissioner after hearing the argument and perusing the

records and adducing the evidence came to the conclusion that the deceased was working with the petrol pump of respondent No.2. While he was discharging his duties, the motor-cyclist who came, bought petrol and when the deceased asked for the money he was shot and because of the injury sustained by him, he passed away during the course of treatment. Accordingly, the Tribunal awarded a compensation of Rs.1,20,000/- and additional Rs.10,000/- for penalty vide order dated 03.11.2015. This order has been assailed by the claimant stating the compensation awarded was not justified as he was drawing salary of Rs.6,000/- however, the Tribunal has only considered as Rs.1,000/- and awarded the compensation.

5. Learned counsel for the appellants submits that the deceased was a skilled labour and had experience of dispensing the petrol in petrol pump. He further submits that as per the Minimum Wages Act of Uttar Pradesh effective from 01.04.2012 to 30.09.2012 (which was applicable at the time in which the incident took place). As per the aforesaid notification under the said Act, the petrol and diesel personnel had a minimum wage of Rs.220.35/- being a skilled labour and the same should have been awarded to them. To buttress his argument, he placed reliance on the judgment passed by this Court in **First Appeal From Order No.3509 of 2018 (Santosh Kumar vs. The Oriental Insurance Co. Ltd. and 2 ors.)** wherein the High Court has increased the amount on the basis of minimum wages to Rs.6,000/-. He further submits that rate of interest has only been assigned @9% whereas the interest ought to have been 12%.

6. Learned counsel for the appellants has also referred the case of **New India Assurance Company Ltd. vs. Smt. Resha Devi and others** reported in **2017(3) ADJ 685**, particularly paragraph nos.9, 10 and 11 of this judgment which are quoted hereinbelow;

"9. The next submission of the learned counsel for the appellant that income of Rs.100/- per day presumed by the tribunal is extremely on higher side is without any force and not liable to be accepted. Tribunal in recording the said claim has relied upon the judgment of the Hon'ble Apex Court in the case of Laxmi Devi and another Vs. Mohammad Tabbar and others, 2008 (2) TAC 394 SC wherein notional income to unskilled labour was presumed to be Rs.100/- per day. Much water has flown since 2008. It is a matter of common knowledge that with the rise in

price index, there has been considerable increase in the wages of salaried as well as self employed person. The average income of even a daily labour in 2014 when the accident took place cannot be presumed to be less than Rs.200/- per day. In our considered opinion, the tribunal committed a manifest error of law in presuming the notional income of the deceased to be Rs.100/- per day.

10. In the case of Santosh Devi Vs. National Insurance Company Limited and others (2012) 6 SCC-421 in paragraph 17 of the reports has observed as under :

"17. Although the wages/income of those employed in organised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis of even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this contest, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

11. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations. Obviously award of damages would depend upon the particular facts and circumstances of the case but the element of fairness in the amount of compensation so determined is the ultimate guiding factor. In such view of the matter, presumption of Rs.100/- per

day as notional income even for a unskilled labour in the year 2014 appears to us to be frugal and by no stretch of imagination to be just even the minimum wages fixed by the State Government is much higher than that looking to the rise in cost index. We are of the considered upon that notional income of an unskilled labour could not be less than Rs.200/- per day."

7. Learned counsel for the appellants stated that deceased was working as a Salesman and accordingly, he should be kept in the category of skilled worker wherein minimum wages are Rs.220.35/- per day and accordingly, the claim made by the claimants @ Rs.6,000/- per month was justified. Even in **Santosh Kumar** (supra) and **Smt. Resha Devi** (supra), this Court had treated the income of the deceased as Rs.6,000/- per month.

8. Further, learned counsel for the appellants has placed reliance on various judgments of the Hon'ble Supreme Court as well as of High Court in the cases of **Arun Kumar Agrawal and another vs. National Insurance Co. Ltd. and others** reported in 2010 ACJ 2161, **Ramchandrapa vs. Manager, Royal Sundarma Alliance Insurance Company Ltd** reported in 2011 (13) SCC 236, **Hansnath Yadav and others vs. U.P. State Road Transport Corporation Lko** reported in 2015 (1) TAC 219 (All), **Smt. Sarla Verma and others vs. Delhi Transport Corporation and Another**, 2009 (6) SCC 121 and **New India Assurance Company Ltd. vs. Smt. Resha Devi and others** reported in 2017(3) ADJ 685.

9. *Per contra*, learned counsel for the respondents submits that deceased was working as an apprentice and as per the appointment letter he was only drawing a salary of Rs.1,000/-. He further submits that receipts were also been filed wherein it is shown that deceased was given only Rs.1,000/- per month. He further submits that the order passed by the Tribunal is perfectly justified as the claimant could not place any document to show that he was drawing a salary more than Rs.1,000/- per month nor the documents were filed by the respondents before the Tribunal denied.

10. Heard learned counsel for the parties and perused the record.

11. It is a very unfortunate case where the son of the claimant who was only 20 years old was working in the petrol pump of the respondent No.2 wherein he was dispensing petrol to the various vehicles. While doing so in the course of his employment, a motor-cyclist came for fulfillment of the petrol

when being asked for the money, the motor-cyclist shot him and because of the injury sustained he died after some days during the course of treatment. An F.I.R. of the same was lodged but it appears that the respondent No.2 at that point of time had paid Rs.1,00,000/- however, no amount was paid later by the respondents to the claimants family. Aggrieved by the adamant attitude of the respondent No.2, the claimant preferred a claim petition before the court of Workmen Compensation Commissioner/Assistant Commissioner, Faizabad region Faizabad and thereafter, the court treating the income of the deceased as Rs.1,000/- has granted a compensation of Rs.1,20,000/-. The reason assigned for granting compensation was that the deceased was working as an apprentice and was drawing a salary of Rs.1,000/- per month. It is evident that as per the Minimum Wages Act, Uttar Pradesh which was applicable on 01.04.2012 to 30.09.2012, the employees working on petrol and diesel oil pumps if they were skilled the minimum wages ought to have been Rs.220.35 per day, if they were unskilled the minimum wages ought to have Rs.174.14/- per day and if they were semi skilled, the minimum wages ought to have Rs.198.51/- per day.

12. There is nothing on record to put forward by the counsel for the respondents which show that the provisions of apprentice act was made applicable. Specially the provisions of Section 4 and Section 6 of the Act. In absence of the same, it cannot be presumed that the deceased was working as an apprentice just because of signing an agreement.

13. Since the issue pertains to whether the deceased was engaged as a skilled, semi-skilled, or unskilled labourer, it is necessary to examine the nature of the work performed by him. The work of oil dispensing, considering its requirements, would clearly fall within the category of skilled labour. Accordingly, wages at the rate of Rs.220.35 per day ought to be considered. However, it is reasonable to assume that the deceased would not have worked for all 30 days in a month; therefore, calculating wages for 26 working days would be justified, which comes to approximately Rs.5,729.10/- per month. Taking a conservative approach, rounding off the income to Rs.5,700 per month would be justified. Though, in an identical matter of Santosh Kumar (supra), the income of the deceased was treated as Rs.6,000/- per month.

14. As far as interest is concerned, 9% interest provided by the Tribunal seems to be perfectly justified.

15. Accordingly, the impugned judgment and award dated 03.11.2015 passed by the Workmen Compensation Commissioner/Assistant Commissioner, Faizabad region Faizabad in W.C. Case No.04/2013 is modified to the following extent:-

Compensation awarded by the Tribunal considering the salary as Rs.1,000/- per month	Compensation awarded by this Court after considering the salary as Rs.5,700/- per month
$1000/2 \times 221.37 = \text{Rs.1,10,685/-}$ and as per the Act, the minimum amount of compensation in case of death is Rs.1,20,000/- thus, the Tribunal Awarded Rs.1,20,000/-	$5700/2 \times 221.37 =$ Rs.6,30,904/- Formula applied as per law

16. It is made clear that only this amount is modified and rest of the amounts awarded by the Tribunal would be the same. The amount which is already paid would be adjusted to the amount of compensation modified by this Court.

17. The appeal is **disposed of** in above terms.

18. Let the record be returned to the court concerned along with a copy of this judgment for necessary compliance.

March 23, 2026
Saurabh Yadav/-

(Prashant Kumar,J.)