

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**FAO-4990-2023 (O&M)
Date of decision : 12.03.2025**

United India Insurance Co. Ltd.

..... Appellant

versus

Sohan Lal and others

..... Respondents

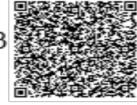
CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. S.S. Momi, Advocate
for respondent No.1.

PANKAJ JAIN, J. (Oral)

1. Challenge is to the award dated 12.10.2022 passed by MACT, Kurukshetra.
2. Counsel for the appellant has assailed the award passed by the Tribunal raising two fold pleas. He submits that the Tribunal ought to have relied upon minimum wages as notified under the Minimum Wages Act by the State and not DC rates, which are only applicable in the case of administrative exigencies and do not exhibit the true market situation of the labour Courts. Further, Mr. Aggarwal contends that from the cross-examination of the author of the disability certificate, it is evident that the disability of 90% assessed in the disability certificate was only qua particular limb and not whole body. Where the disability is converted to whole body, it gets reduced to 30%.



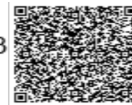
3. I have heard Mr. Aggarwal and have carefully gone through the records of the case.

4. So far as the issue of reliance upon the D.C. rates is concerned, the same already stands answered by this Court in '**IFFCO-TOKIO General Insurance Company Limited versus Kareshna and others**', FAO-3385-2024 decided on 24.07.2024, observing as under:-

*“11. By now it is settled that wherever the cogent evidence with respect to income of the deceased is not available, Tribunals are empowered to resort to guess work. The precaution that needs to be taken is that compensation awarded by resorting to guess work should not be punitive to the person liable nor the same should be source of profit to the person benefited. Supreme Court in the case of **R.D. Hattangadi Vs. M/s Pest Control (India) Pvt. Ltd & others, reported as AIR 1995 Supreme Court 755** discussed various aspects and laid down guidelines to be followed while making guess work and awarding compensation under various heads. Thus in order to resort to guess work, it is incumbent upon the Tribunal to refer to some yardstick. The yardstick in determining the income necessarily need not be minimum wages as is being canvassed by the counsel representing the appellant. In **Express Newspapers (Private) Ltd. Vs. Union of India, 1959 SCR 12**, Supreme Court considered the concepts of “minimum wage”, “fair wage” and “living wage” and observed as under:-*

“ xxx xxx xxx

“There is also a distinction between a bare subsistence of minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family, that is, a rate which has got to be paid to the worker irrespective



*of the capacity of the industry to pay. If an industry is unable to pay to its workmen at least a bare minimum wage it has no right to exist". (See **M/s. Crown Aluminium Works v. Their Workmen**), 1958 SCR 651 (quoted in SCR 12).*

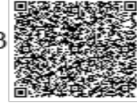
It was further observed:

"The statutory minimum wage however is the minimum which is prescribed by the statute and it may be higher than the bare substance or minimum wage, providing for some measure or education, medical requirements and amenities, as contemplated above.

While the lower limits of the fair wage must obviously be the minimum wage the upper limit is equally set by what may broadly be called the capacity of industry to pay. This will depend not only on the present economic position of the industry but on its future prospects. It will be noticed that the "fair wage" is thus a mean between the living wage and the minimum wage and even the minimum wage contemplated above is something more than the bare minimum or subsistence wage which would be sufficient to cover the bare physical needs of the worker and his family a wage which would provide also for the preservation of the efficiency of the worker and for some measure of education, medical requirements and amenities". This concept of minimum wage is in harmony with the advance of thought in all civilised countries and approximates to the statutory minimum wage which the State should strive to achieve having regard to the directive Principle of State Policy mentioned above."

It was further observed:

"It will also be noticed that the content of the expressions "minimum wage" fair wage and 'living wage' is not fixed and static. It varies and is bound to vary from time to time. With the growth and development of national economy, living standards would improve and so would out notions about the respective categories of wages expand and be more, progressive."



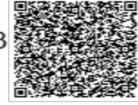
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12. *In M/s. Jaydip Paper Industries Thana v. The Workmen, (1972)1 Lab LJ 244 at p. 247* this Court referred to the observation in an earlier decision of this Court in *U. Unichoyi v. State of Kerala, (1962)1 SCR 946 (957)* quoted in (1972) 1 Lab LJ 244 at p. 247 as follows :-

" Sometimes the minimum wage is described as a bare minimum wage in order to distinguish it from the wage structure which is 'subsistence plus' or fair wage, but too much emphasis on the adjective 'bare' in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand, since the capacity of the employer to pay is treated as irrelevant, it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker".

13. *In M/s. Unichem Laboratories Ltd. v. The Workmen, (1972)1 Lab LJ 576 at pp. 590-591* this Court observed as follows :-

" In the fixation of wages and dearness allowance the legal position is well established that it has to be done on an industry-cum-region basis having due regard to the financial capacity of the unit under consideration.... Industrial adjudication should always take into account, when revising the wage structure and granting dearness allowance the problem of the additional burden to be imposed on the employer and



*ascertain whether the employer can reasonably be called upon to bear such burden. As pointed out in **Greaves Cotton and Co. v. Their Workmen, (1964)5 SCR 362 quoted in (1972) 1 Lab LJ 576**, one of the principles to be adopted in fixing wages and dearness allowance is that the Tribunal should take into account the wage scale and dearness allowance prevailing in comparable concerns carrying on the same industry in the region."*

14. *Thus from the aforesaid precedent, it is clear that the floor level is the bare minimum wage and the Tribunal thus is not required to go merely by the floor wage. D.C. rates are also fixed by the Government for payment to the willing workers and thus cannot be said to be an unreasonable yardstick.*

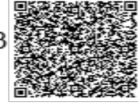
15. *In the present case it has come on record that the deceased was a skilled carpenter. He was a young boy of 20 years of age. Thus the plea that only the minimum wage can be the yardstick to assess his income and Tribunal erred in applying the D.C. rate cannot be accepted."*

5. In view of the aforesaid factum, the first plea sans merit and is hereby rejected.

6. Coming on the second plea raised with respect to assessment of disability is concerned, it is matter of record that the claimant was working as cleaner/helper on the vehicle. His left leg got amputated above thigh. The issue with respect to permanent disability and the functional disability already stands answered by four judges Bench in **Pratap Narain Singh Deo vs Srinivas Sabata And Anr, (1976) 1 SCC 289** observing as under:-

"5. The expression "total disablement" has been defined in section 2(1)(l) of the Act as follows:

" "total disablement" means such disablement, whether of a



temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement."

It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

"The injured workman in this case is carpenter by profession....By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only."

This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal." "

7. In view thereof, the Tribunal has rightly taken the permanent disability of the claimant as 63% and awarded compensation accordingly.

8. Finding no merit in the present appeal, the same is ordered to be dismissed.

9. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

12.03.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No