IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4825-2017 (O&M)
Reserved on :04.11.2026
Pronounced on: 11.11.2026
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Whether only operative part of the judgment is pronounced or the full judgment is pronounced: *Operative part/full judgment*

United India Insurance Company Limited

…...Appellant

Versus

Vipin Kumar and others

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present:- Mr. Harsh Aggarwal, Advocate and
Mr. Parit Aggarwal, Advocate for the appellant

Mr. Arun Takhi, Advocate
for respondent No.1-claimant

MANDEEP PANNU, J.

1. The present appeal has been filed by the appellant-insurance company impugning the award dated 24.03.2017 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal') whereby compensation of ₹38,77,360/- has been awarded to the respondent No.1-claimant on account of injuries suffered by him in a motor vehicular accident, fastening the liability to pay the compensation upon the appellant-insurance company.

2. Learned counsel for the appellant-insurance company has argued that the learned Tribunal has erred in assessing the monthly income of the injured at ₹12,000/- instead of ₹8,000/-, as reflected in the salary certificate. It is submitted that, as per the statement of CW-1, an employee

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of Score Club, the injured was drawing a monthly salary of ₹8,000/-. Therefore, taking his monthly income as ₹12,000/- by adding an amount of ₹4,000/- towards tips is not sustainable in law. It is contended that the amount received by way of tips is voluntary in nature and cannot be treated as a fixed component of income. Accordingly, the learned Tribunal has wrongly assessed the income of the injured, resulting in an excessive award of compensation. It is, thus, prayed that the amount of ₹4,000/- added towards tips be excluded while calculating the income of the injured and the compensation be suitably reduced.

3. On the other hand, learned counsel for the respondent no.1-claimant has argued that the injured was working as a waiter and was earning ₹8,000/- per month as salary, besides receiving approximately ₹4,000/- per month by way of tips from customers. It is submitted that the factum of receipt of tips is duly established from the evidence on record and has not been disputed by the appellant. Learned counsel has further submitted that tips received by persons working in the hospitality industry constitute a regular source of earnings and cannot be excluded merely because the same are received from customers. Reliance in this regard has been placed upon the judgments of the Hon'b le Delhi High Court in **Oriental Insurance Company Limited v. Ms. Milly Das Gupta and others**, MAC.APP. No. 1069 of 2011, decided on 07.01.2015, and the Hon'ble Bombay High Court in **Mrs. Sangamma Kolkar and another v. Mr. Vasudev Gaonkar and others**, **2015(32) RCR (Civil) 322**. It is, thus, contended that the learned Tribunal has rightly taken the monthly income of the injured as ₹12,000/- by including the amount received towards tips and

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no illegality or infirmity can be attributed to the impugned award on this account.

4. I have heard learned counsel for the parties and have perused the impugned award as well as the record.

5. The principal controversy arising for consideration in the present appeal is whether the amount received by the injured towards tips, over and above his fixed monthly salary, could be taken into consideration while assessing his monthly income for the purpose of determining compensation.

6. The contention raised on behalf of the appellant does not merit acceptance. It is not disputed that the injured was working as a waiter at Score Club and was drawing a monthly salary of ₹8,000/-. The dispute is only with regard to the addition of ₹4,000/- towards tips received by him from customers. The fact that persons employed as waiters in restaurants and clubs receive tips from customers is a recognised feature of employment in the hospitality industry. Such receipts, where established by evidence and shown to be regularly earned, cannot be excluded from the assessment of income merely on the ground that they are not paid by the employer as a fixed component of salary. The relevant consideration for determining the income of the injured is his actual and regular earnings and not merely the amount reflected in the salary certificate.

7. In **Oriental Insurance Company Limited v. Ms. Milly Das Gupta and others (supra)**, the Hon'ble Delhi High Court specifically dealt with the question whether tips received by an employee working in the hospitality industry could be included while determining her income for the

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purpose of computation of compensation under the Motor Vehicles Act. The Court upheld the inclusion of tips, observing that earning of tips by persons employed in the hospitality industry is a usual feature and constitutes a part of their regular earnings. The argument of the insurance company that tips ought to be excluded from the income was accordingly rejected.

8. Similarly, in **Mrs. Sangamma Kolkar and another v. Mr. Vasudev Gaonkar and others (supra)**, the Hon'ble Bombay High Court considered the income of a deceased waiter who was receiving ₹1,500/- as salary and ₹1,300/- by way of tips. The contention of the insurance company that the amount received as tips was uncertain and depended upon the customers visiting the establishment was rejected. It was held that what was required to be considered was the gross monthly earning of the deceased and the amount received towards tips was accordingly included while determining his income.

9. The ratio of the aforesaid judgments squarely supports the view taken by the learned Tribunal. In the present case, the injured was admittedly employed as a waiter and the receipt of ₹4,000/- per month towards tips, in addition to his salary of ₹8,000/-, has not been disputed by the appellant by bringing any cogent material on record. The mere fact that the tips were received from customers and were not part of the fixed salary paid by the employer would not be sufficient to exclude the same from his monthly earnings. Accordingly, the learned Tribunal has rightly assessed the monthly income of the injured at ₹12,000/- by adding the amount received towards tips to his fixed salary.

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10. There is yet another significant aspect of the matter. It is not disputed that the injured has suffered 100% permanent disability as a result of the injuries sustained in the accident. The extent of disability has a direct bearing upon the assessment of compensation, particularly under the head of loss of future earning capacity. In a case where the injured has suffered 100% disability, the consequences of such disability upon his future life and earning capacity assume considerable significance. The compensation is required to be assessed keeping in view the nature and extent of the disability and its impact upon the injured's ability to earn his livelihood. The learned Tribunal has assessed the compensation after taking into consideration the relevant factors, including the income of the injured.

11. In view of the aforesaid discussion, this Court finds no illegality or perversity in the assessment of the monthly income of the injured at ₹12,000/- by the learned Tribunal. The amount of ₹4,000/- received towards tips has rightly been included in his monthly income. The appellant has failed to make out any ground warranting interference with the impugned award on this account.

12. Consequently, the appeal, being devoid of merit, is dismissed and the award dated 24.03.2017 passed by the learned Motor Accident Claims Tribunal is upheld.

13. All the pending miscellaneous applications, if any, are also disposed of.

11.11.2026 **(MANDEEP PANNU)**
rekha **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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