

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

F.A.O No. 301 of 2012

Date of decision:- 08.09.2015

National Insurance Co. Ltd

...Appellant

Versus

Lakhwinder Kaur and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ashwani Talwar, Advocate
for the appellants

Mr. Nitin Goyal, Advocate for
Mr. Sanjiv Gupta, Advocate
for respondent Nos. 1 to 5.

Mr. Sherry K. Singh, Advocate
for respondent No. 6

None for respondent No.7

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J. (Oral)

This appeal is by the insurance company disputing the liability foisted upon it by the Motor Accident Claims Tribunal, Patiala (for brevity, the tribunal'), vide its order dated 03.11.2011 whereby the appellant-Company (for short 'the appellant') was held liable to make the compensation to the tune of Rs.21,52,000/-.

Facts not in dispute

2. On 04.06.2010, Raghbir Singh (since deceased) was coming from his office on his Platine Motorcycle bearing No. PB-13-W-2247 (T) and was proceeding towards his village Shahpur and his brother Jagtar Singh was following him on his separate motorcycle. When they reached near Nabha Thurhi road, near the brick kiln, then truck tipper bearing No. PB-23-H-9611 came from the opposite sit, which was being driven at a high speed and in a rash and negligent manner, struck in the motorcycle of Raghbir Singh, as a result of which he fell down and suffered multiple injuries. He was taken to Civil Hospital, Nabha, where he was declared dead. F.I.R No. 85 dated 05.06.2010 U/S 279/427/304-A IPC was got registered in this regard.

COMPENSATION ASSESSED BY THE MACT

3. The learned Tribunal assessed the income of the deceased at Rs.14646/- per month, as per salary certificate and 30% added towards future prospects and the amount comes to Rs.19039 and after deduction of income tax, his salary was taken to Rs.17,000/-deducted , deduction of 1/4th was applied towards personal expenses and the annual dependency comes to Rs.24000/- and the annual dependency comes to Rs.1,53,000/- and considering the age of the deceased, the multiplier of 14 was applied. The claimants were awarded compensation of Rs.21,42,000/- and Rs.5000/- each towards loss of consortium and funeral expenses. The total compensation comes to

Rs.21,52,000/-

Arguments Advanced

4. The learned counsel for the appellant has argued that the learned Tribunal has awarded a highly excessive amount of compensation, as the gross salary of the deceased was Rs.14,646/- per month and the wife of the deceased was given compassionate appointment in the department and was getting a salary of Rs.7000/- per month besides above, she is getting the pension to the extent of Rs.5,000/- per month. Even if the awarded amount of Rs.21,52,000/- is put in a fixed deposit, the wife of the deceased will get Rs.18000/- per month as interest.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***Vimal Kanwar and others vs. Kishore Dan and others, 2013 (3) SCC (Cri) 583*** wherein Hon'ble the Supreme court has examined the issue with regard to compassionate appointment and in para 20 and 21 has observed as under:-

20. The second issue is “whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as “Pecuniary Advantage” liable for deduction.”

“Compassionate appointment” can be one of

the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the

periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act.

21. *The third issue is “whether the income tax is liable to be deducted for determination of compensation under the Motor Vehicles Act”*

In the case of Sarla Verma & Anr. (Supra), this Court held “generally the actual income of the deceased less income tax should be the starting point for calculating the compensation.”

This Court further observed that “where the annual income is in taxable range, the word “actual salary” should be read as “actual salary less tax”. Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. But while deducting income-tax from salary, it is necessary to notice the nature of the income of the victim. If the victim is

receiving income chargeable under the head “salaries” one should keep in mind that under Section 192 (1) of the Income-tax Act, 1961 any person responsible for paying any income chargeable under the head “salaries” shall at the time of payment, deduct income-tax on estimated income of the employee from “salaries” for that financial year. Such deduction is commonly known as tax deducted at source (‘TDS’ for short). When the employer fails in default to deduct the TDS from employee salary, as it is his duty to deduct the TDS, then the penalty for non-deduction of TDS is prescribed under Section 201(1A) of the Income-tax Act, 1961.

Therefore, in case the income of the victim is only from “salary”, the presumption would be that the employer under Section 192 (1) of the Income- tax Act, 1961 has deducted the tax at source from the employee’s salary. In case if an objection is raised by any party, the objector is required to prove by producing

evidence such as LPC to suggest that the employer failed to deduct the TDS from the salary of the employee.

However, there can be cases where the victim is not a salaried person i.e. his income is from sources other than salary, and the annual income falls within taxable range, in such cases, if any objection as to deduction of tax is made by a party then the claimant is required to prove that the victim has already paid income tax and no further tax has to be deducted from the income.”

In the above mentioned judgment, Hon'ble the Supreme Court has made reference to the judgment of ***Helen C. Rebello (Mrs.) and others v. Maharashtra Road Transport Corporation and another, 1998(4) RCR (Civil) 177*** wherein it was held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a “pecuniary advantage” receivable by the heirs on account of one’s death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as “pecuniary

advantage” liable for deduction.

Following the ratio of law laid down in the above mentioned Supreme Court judgments, the present appeal is dismissed being devoid of any merits.

September 08, 2015

G Arora

(***RITU BAHRI***)

JUDGE