IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3342-2012 (O&M)
Date of decision: 10.9.2015

The Oriental Insurance Company Limited

...Appellant

Versus

Aruna Kumari and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.DP Gupta, Advocate for the appellant

Ms.Sunita Nambiar, Advocate
for respondents No. 1 and 2-claimants

Mr.Kunal Mulwani, Advocate for respondent No.3

Mr.Nikunj Dhawan, Advocate for respondent No.4

****

SNEH PRASHAR, J.

The present appeal has been filed by the appellant-Insurance Company challenging the award dated 2.2.2012 passed by the learned Motor Accident Claims Tribunal, Chandigarh , (for short 'the Tribunal') vide which, the claim petition filed by respondents No.1 and 2-claimants was allowed and compensation to the tune of Rs. 25,60,265/- alongwith the interest at the rate of 8% per annum from the date of filing of the claim petition till its realisation was awarded. However, the appellant-Insurance Company was directed to first pay the compensation and then recover the same from the driver and owner of the offending vehicle.

The submissions made by learned counsel for the parties have been heard and record perused.

The only issue involved in the present appeal is that the benefit of family pension being received by the widow of the deceased should have been deducted from the income of the deceased assessed by learned Tribunal.

As is evident from the record, the deceased was employed as Lecturer in Government Girls Model Senior Secondary School, Sector 18, Chandigarh and as per Ex.P3, the salary certificate, his gross salary was Rs.18557/- per month. As per Ex.R-1 Form-16, the deceased was having tax liability and therefore, the learned Tribunal after deducting a sum of Rs.6651/-as tax, assessed his total income at Rs.2,09,365/- per annum.

In **Lal Devi and others vs. Himachal Road Transport (2007) 8 Supreme Court Cases 319**, the Hon'ble Supreme Court has held as under:-

> "In **Helen C.Rebello vs. Maharashtra SRTC (AIR 1998 SC 3191**, this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions

receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants."

Similarly in **<u>Vimal Kanwar vs. Kishore Dan and others 2013(2) RCR (Civil) 945</u>** also the Hon'ble Supreme Court held as under:-

"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.”

Above being the law the amount being received by the claimants-respondents No.1 and 2 as family pension could not be deducted from the amount of dependency assessed by the Tribunal. The findings recorded by the Tribunal in that regard deserve to be upheld.

Moreover, in **National Insurance Co. Ltd. vs. Chella Bharathamma and others 2004 ACJ 2094 t**he Hon'ble Supreme

Court has observed that the statutory defences which are available to the insurer to contest the claim are confined to those provided in sub-section (2) of Section 149 of the Act. It has further observed that "considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability." Thus, the appellant Insurance Company could not raise the plea that the compensation awarded was excessive. However, learned Tribunal has given right to the Insurance Company to recover the awarded amount to be paid by it from the driver and the owner of the offending vehicle.

In view of the above, the present appeal being devoid of any merit is dismissed.

10.9.2015 **(SNEH PRASHAR)**
gsv **JUDGE**