IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**FAO No.4783 of 2012 (O & M)**
**Date of Decision:** *February 26, 2015*

Reliance General Insurance Company Limited
…… APPELLANT

VERSUS

Jaswant Kaur & others
….. RESPONDENTS

**CORAM:** HON'BLE MR. JUSTICE JASPAL SINGH

PRESENT: Mr. Tajender K. Joshi, Advocate, for the appellant.

Mr. K.S. Rekhi, Advocate, for claimants – respondent Nos.1 to 4.

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Jaspal Singh, J

1. Reliance General Insurance Company Limited, Chandigarh (for brevity, 'Insurance Company') has preferred instant appeal feeling dis-satisfied qua award dated January 19, 2012 passed by the Motor Accident Claims Tribunal, Gurdaspur (for short, 'Tribunal') in case captioned 'Jaswant Kaur & others vs. Bhola @ Dilbagh Singh & another', whereby claimants were awarded a sum of ₹ 21,60,000/- by way of compensation on account of death of Sucha Singh, occurred in a vehicular accident on December 21, 2009 involving vehicle TATA 207.PB-06E-2041

and both the respondents i.e. owner/driver and Insurance Company were jointly and severally made liable to pay the same.

2. While assailing impugned award, it has been argued by learned counsel for appellant – Insurance Company that learned Tribunal did not appreciate the evidence available on file and has wrongly and illegally fastened liability upon Insurance Company. Infact, learned Tribunal has lost sight of fact that in the instant case, Sucha Singh (deceased) was posted as Constable with PAP, Jalandhar. Learned Tribunal has assessed his income as ₹ 12,000/- per month. Future prospects to the extent of 50% on this amount have also been added to determine dependency. But learned Tribunal has failed to appreciate that widow of Sucha Singh was getting family pension after demise of her husband. So, amount of family pension was required to be deducted while assessing dependency as well as compensation. Similarly, since income of deceased has been assessed to ₹ 18,000/- per mensem i.e. ₹ 12,000/- as salary + ₹ 6,000/- being 50% of future prospects. Learned Tribunal has failed to make deduction on account of income tax which should have been to an extent of 30%. Thus, compensation awarded by learned Tribunal deserves to be modified.

3. Learned counsel for the respondents has supported the award passed by learned Tribunal by submitting that since just and

adequate compensation has already been awarded by learned Tribunal while keeping in view the facts & circumstances of the case, evidence available on file and the latest proposition of law, no interference of this Court is justified. Appeal deserves to be dismissed with exemplary costs.

4. This Court has given an anxious thought to rival submissions made by learned counsel for parties and meticulously gone through impugned award.

5. Only question which requires determination in this appeal is as to whether family pension being drawn by respondent No.1 – claimant after death of Sucha Singh is liable to be deducted from total income of deceased and further whether an amount is also required to be deducted from income of deceased assessed or to be assessed by learned Tribunal to the extent of 30% on account of income tax. The answer to both these questions is in negative.

6. The question whether pension, provident fund and insurance etc. receivable by claimants come within periphery of Motor Vehicles Act, 1988 (for short, 'Act') to be termed as "pecuniary advantage" liable for deduction, came for hearing before Hon'ble Apex Court in case Vimal Kanwar & others vs. Kishore Dan & others, *2013(2) RCR (Civil) 945*. While making observations, Hon'ble Apex Court relied upon its previous judgment captioned as Helen C. Rebello (Mrs.) & others vs.

Maharashtra State Road Transport Corporation & another, *1998(4) RCR (Civil) 177.* In the said case, Hon'ble Apex Court Court 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 Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of Apex Court:-

> "35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also 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. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though 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. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has

> to be on a similar and same plane having nexus, *inter se*, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

7. A perusal of aforesaid observations transpires that pension which is being received on account of accidental death of an employee will not come within periphery of Act to be termed as "pecuniary advantage" liable for deduction.

8. As far as contention of learned counsel for appellant with regard to deduction to the extent of 30% on account of income tax is concerned, it has been observed by Hon'ble Apex Court in Vimal Kanwar's case (surpa) that in case income of the victim is only from salary, presumption would be that employer, under Section 192(1) of the Income Tax Act, 1961, has deducted tax at source from employee's salary. In case, if an objection is raised by any party, the objector is required to prove by adducing evidence such as LPC to suggest that employer has failed to deduct TDS from salary of employee.

9. In the case in hand, neither any such objection was taken before learned Tribunal by Insurance Company nor any

evidence to this effect was adduced. For the first time, this objection has been taken while filing instant appeal. Thus, this Court does not find any merit in the contentions put-forth by learned counsel for appellant. Rather, this Court is of considered view that there is no infirmity or illegality in impugned award and same is absolutely in consonance with law applicable to the facts and circumstances of the case as well as evidence available on file.

10. In the light of what has been discussed above, finding no merit in the instant appeal, same is dismissed whereby impugned award is upheld.

11. No order as to costs.

**(Jaspal Singh)**
**Judge**

**February 26, 2015**
**avin**