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

(1)

FAO No.1358 of 2014 (O&M)
Date of Decision: September 18, 2015.

United India Insurance Company Limited

..........APPELLANT(s).

VERSUS

Rashmi Devi and others

........RESPONDENT(s).

(2)

FAO No.2043 of 2014 (O&M)

Rashmi Devi and others

..........APPELLANT(s).

VERSUS

United India Insurance Company Limited

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.R. Bansal, Advocate
for the appellant in FAO-1358-2014 and for
respondent No.3 in FAO-2043-2014.

Mr. Jitender Malik, Advocate
for respondents No.1 and 2 in FAO-1358-2014
and for appellants in FAO-2043-2014.

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SURINDER GUPTA, J.

This judgment will dispose of both the afore-mentioned appeals filed against award dated 06.12.2013 passed by Motor Accident Claims Tribunal, Hissar (later referred to as the Tribunal).

FAO-2043-2014

This is appeal seeking enhancement of compensation allowed by the Tribunal for the death of Deepak Kumar (later referred to as the deceased) son of claimants, who while going on motorcycle bearing registration No.HR-24Q-7290 met with an accident with tractor-trolley bearing registration No.HR-20V-3407 (later referred to as the offending vehicle).

Learned counsel for the claimants has argued that as per the salary certificate produced on record, the deceased was getting a salary of ₹17,282/- but the Tribunal has made the deductions of allowances like washing allowance, travelling allowance from the salary of the deceased.

Learned counsel for the insurance company submits that allowances like the travelling allowance, washing allowance allowed to the claimant were the personal allowance of deceased. The Tribunal has not deducted the other personal allowances like special personal allowance, entertainment allowance or actual reimbursement Tot. While assessing the income of the deceased, the Tribunal in para 17 of the award has observed as follows:-

> "At the time of accident, deceased Deepak Kumar was working in Reliance Company, which is a private company. He was drawing total salary in the tune of Rs.17,919/-, out of same, amount of conveyance allowance, travel/fuel expenses and washing expenses have been deducted. After deduction of amount, monthly salary of the deceased comes out in the tune of Rs.13998/-. Petitioners are parents of deceased Deepak Kumar. He was unmarried at the time of accident and so

> in view of law laid down in **<u>Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009-3) RCR 77</u>** claimants would be entitled for 50% income of the deceased and while accepting the said ratio, the contribution of the deceased towards the claimants comes to Rs.13998/2=6999/-."

After assessing the dependency of the deceased as ₹6,999/-, an enhancement of 50% was given towards future prospects while calculating the amount of compensation. The Tribunal has allowed compensation of ₹2 lacs towards loss of love and affection and for sufferings to both the claimants, besides allowing a sum of ₹25,000/- towards funeral expenses.

The allowances like washing allowance and travelling allowance were personal allowances which the deceased was getting because of his going to the office while attending the duty and this could not be taken into account while calculating the amount of dependency of the claimants.

The Tribunal has committed no error of law while reducing the said allowances from the gross salary of the deceased.

No ground is made out to allow further enhancement in this case.

<u>FAO-1358-2014</u>

This appeal has been filed by the insurance company seeking modification of the impugned award on the ground that it was a case of contributory negligence as the accident had taken place due to rash and negligent driving of motorcycle by the deceased as well.

Learned counsel for the insurance company, while referring to the statement of PW2 Rajinder Sharma, has argued that he in his affidavit

Ex.PW2/A has stated that the offending vehicle was at a high speed and was being driven carelessly and negligently without lights. The driver of the offending vehicle brought it on the middle of the road and hit against the motorcycle. He has argued that if the tractor-trolley was driven at a high speed and motorcycle was at a moderate speed, the accident could not take place. In fact, the motorcycle had hit the tractor-trolley and was a case of contributory negligence.

On perusal of the written statement filed by respondents No.1 and 2 and respondent No.3, I find that the respondents have denied the accident and have not taken any plea that the accident had taken place due to contributory negligence of the deceased. Even at the time of issuing notice of motion, this point was considered and it was ordered as follows:-

> "Learned counsel has argued that there is a discrepancy in the version recorded by Rajender Kumar in the FIR and his testimony in the Court. He has reproduced the version of the FIR in the grounds of appeal wherein also it was alleged that the accident had taken place as a result of rash and negligent driving of the tractor. The only difference is, in the FIR, it was mentioned that the motorcycle struck against the tractor while in the testimony, he has mentioned that tractor struck against the motorcycle. In my opinion, these two statements are six of one and half a dozen of the other. Essential factor is that he stead fast on both these occasion in his assertion that the accident had been caused due to rash and negligent driving of a tractor trolly, which suddenly turned without any lights. It is also noteworthy that the driver of the tractor trolly did not appear in the witness box to revert the testimony."

In the absence of any pleading, it appears that no such argument was even raised before the Tribunal, even at the time of final arguments. The submissions of learned counsel for the appellant-insurance company have no merits and are rejected.

No other argument in this appeal has been raised.

There is no merit in both the afore-mentioned appeals, the same are dismissed.

(SURINDER GUPTA)
September 18, 2015. **JUDGE**
Sachin M.