IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3963 of 2014 (O&M)
Date of decision: 18.11.2015

Smt. Kitabo Devi alias Kitab Kaur

….Appellant

Versus

Sombir and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.A. Sheoran, Advocate, for the appellant.

Mr. Neeraj Khanna, Advocate, for respondent No.3.

Mr. D.K. Prajapati, Advocate, for respondent No.6-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') vide award dated 30.01.2014, on account of death of Ram Chander in a motor vehicular accident which took place on 07.12.2008. Appellant is widow of deceased Ram Chander.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 07.12.2008, at about 12.00 A.M., deceased-Ram Chander along with Ram Kishan was going on a motorcycle bearing registration No. HR-16-E-9106 from Bhiwani to Legha. Ram Kishan was driving the said motorcycle, which was being followed by another motorcycle bearing registration No. HR-16-E-6985 being driven by

Rajesh with one pillion rider namely, Joginder Singh. When they reached near Dhirana turning, a vehicle bearing registration No. HR-99-7221 being driven by Naresh Kadyan-respondent No.4 in a rash and negligent manner, came from Dhirana side and struck against the motorcycle of deceased, as a result of which, both the occupants of motorcycle fell down on the road. After the accident, respondent No.4 fled away from the spot. In the meantime, another vehicle bearing registration No. HR-16-D-0906 came from Bhiwani side at a high speed and hit the accidental motorcycle of Ram Kishan and Ram Chander and dragged them to some distance. He also fled away from the accident site. Ram Kishan and Ram Chander were taken to General Hospital, Bhiwani, where they were declared brought dead. On the statement of Joginder Singh, brother of deceased-Ram Kishan, FIR No.379 dated 07.10.2008, under Sections 279/304-A IPC was registered at Police Station, Sadar, Bhiwani. During investigation, offending vehicle Mahindra Max bearing No.HR-16-D-0906 was recovered by the police. The other vehicle i.e. Wagon-R bearing No.HR-99-1722 could not be traced out. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of offending vehicles by respondent Nos.1 and 4 and thus, returned the finding on Issue No.1 in favour of the claimant. As per evidence before the Tribunal, deceased-Ram Chander was aged about 65 years and he was a retired Subedar. After retirement, he was getting pension of Rs.9097/- per month. After his death, his widow-appellant is getting the family pension. Hence, it was held that there was no loss of dependency on account of death of husband of claimant-appellant. However, she was held entitled to a lump-sum amount of Rs.1,25,000/- (Rs.1,00,000/- for loss of consortium and Rs.25,000/- as funeral and last rites of deceased) as compensation on account of death of her husband-Ram Chander along with interest @ 6% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. At this stage, reference can be made to a judgment passed by the Hon'ble Supreme Court in ***Vimal Kanwar and others Vs. Kishore Dan and others,*** 2013 (2) RCR (Civil) 945, wherein it has been clarified that even grant of pension has to be taken into account while assessing loss of income. In para 19 of the judgment, it has been observed as under:-

> 19. The first issue is "whether Provident Fund, Pension and Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."
>
> The aforesaid issue fell for consideration before this Court in ***Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr.*** reported in (1999) 1 SCC 90. In the said case, this 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 Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and

finding of this 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."

The facts of the present case, the deceased was getting a pension of Rs.9097/- per month and was contributing this amount to his family member i.e. the claimant-appellant.

In view of the above, in the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed in ***Vimal Kanwar's*** case (supra), ***Asha Verman and others vs. Maharaj Singh and others***, 2015(2) RCR (Civil) 520, ***New India Assurance Company Limited vs Gopali and others,*** 2012 (12) SCC 198, ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77, ***Rajesh and others vs. Rajbir Singh and others***, 2013 (9) SCC 54 and ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others***, 2015(3) Recent Apex Judgments 459**,** as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income (pension)	Rs.9097/- per month
(ii)	50% of (i) above is deducted as personal expenses of the deceased	9097 – 4548 = Rs.4549/-
(iii)	Compensation after multiplier of 7 is applied	Rs.4549/- x 12 x 7 = Rs.3,82,116/-
(v)	Loss of consortium for the widow i.e. appellant	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(viii)	Funeral expenses	Rs.25,000/-
(ix)	**TOTAL COMPENSATION AWARDED**	**Rs.6,07,116/-**
(x)	**Enhanced amount of compensation**	**Rs.6,07,116 – 1,25,000 = Rs.4,82,116/-**

The enhanced amount of compensation of **Rs.4,82,116/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others",*** **2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

18.11.2015
ajp