

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

FAO No.1174 of 2001

Date of decision : 20.12.2016

Sushma Devi and another

.....Appellants

Versus

Kulbir Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sushil Saini, Advocate for appellants.

Mr. Ajaib Singh, Addl. A.G. Punjab for respondent No.4.

Mr. Pardeep Goyal, Advocate for respondent-
Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 09.01.2001, passed by the learned Motor Accidents Claims Tribunal, Gurdaspur (hereinafter called the “Tribunal”) in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”), whereby the appellants-claimants have been awarded compensation to the tune of ₹5,04,000/- on account of death of Jugal Kishore caused in the motor vehicular accident which took place on 29.08.1997.

2. The present appeal has been preferred by the appellants-claimants for the enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and gone through the paper-book meticulously.

4. Learned counsel for the appellants-claimants contended that the deceased was working as a Teacher in Government School and was getting the gross salary at the rate of ₹7201/- per month but the learned Tribunal has wrongly taken the salary of the deceased to be ₹6000/- per month. He further contended that no future prospects have been added to the income of the deceased. Even the deduction towards personal and living expenses of the deceased have been wrongly made. The claimants have also not been awarded any compensation under the conventional heads like loss of consortium to the widow, loss of love and affection and funeral expenses. Thus, he contended that inadequate amount of compensation has been awarded.

5. On the other hand Mr. Pardeep Goyal, Advocate, learned counsel for respondent-Insurance Company contended that after death of Jugal Kishore in this accident, his widow - claimant Sushma Devi was given the compassionate appointment and she was getting ₹3700/- per month as salary. Thus, very less financial loss has been caused to the claimants. He further contended that learned Tribunal has assessed the just amount of compensation.

6. I have duly considered the aforesaid contentions.

7. Deceased Jugal Kishore was working as a teacher in Government School. Ex.A2 is his last pay certificate, which shows that the deceased was earning ₹6671/- per month. When there was definite evidence with respect to the salary of the deceased, there was no reason with the

learned Tribunal to take the less salary of the deceased at the rate of ₹6000/- per month. Mere this fact that the appellant-claimant Sushma Devi the widow of deceased Jugal Kishore has got compassionate employment is no ground to conclude that the family of the deceased has not suffered any financial loss. The compassionate appointment is permissible to the family members of the deceased even in case of natural death while in service. The purpose for granting appointment on compassionate ground is to remove the immediate hardship that would be caused to the family of the deceased employee who died in harness. This benefit is not confined only to the accidental death. Thus, the respondents cannot take the benefit of compassionate appointment of appellant-claimant Sushma Devi and the salary being drawn by her. The Hon'ble Apex Court in case ***Vimal Kanwar and others Vs. Kishore Dan and others, 2013(2) RCR (Civil) 945*** has laid down that the salary being received by the claimant on compassionate appointment is not liable to be deducted for determination of the compensation.

8. As already mentioned, the deceased was getting the salary at the rate of ₹6671/-, to make it a round figure, we can take it as ₹6600/- per month i.e. ₹79,200/- per annum. The learned Tribunal has not added any future prospects to the income of the deceased. The deceased was a government employee. He was to get regular increments, pay revisions and dearness allowances etc. So, his salary was bound to increase manifolds during his service career. The deceased was only 35 years of age at the time

of death, so 50% of the income of the deceased is required to be added towards the future prospects. The total income of the deceased comes to ₹1,18,800/- per annum.

9. The present claim petition has been filed by the widow and minor children of the deceased, so the deceased was having three dependent family members. Hence, 1/3rd of his income shall be deducted towards his personal and living expenses. The remainder comes to ₹79,200/-. Keeping in view the age of the deceased, the multiplier of 16 shall be applicable. Thus, the multiplicand comes to ₹12,67,200/-.

10. The learned Tribunal has not awarded any amount to appellant-claimant No.1 Sushma Devi towards loss of consortium. She will be entitled to ₹1,00,000/- towards loss of consortium. No amount has been awarded to appellants-claimants No.2 & 3 the minor children of the deceased towards loss of love, care and guidance of their father. The appellants-claimants No.2 & 3 shall also be entitled to ₹1,00,000/- towards loss of love, care and guidance of their mother. The appellants-claimants shall also be entitled to a sum of ₹25,000/- towards funeral and last rites expenses. In this way, the total amount of compensation payable to the appellants-claimants comes to ₹14,92,200/-.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The total amount of compensation payable to appellants-claimants is enhanced to ₹14,92,200/- from ₹5,04,000/- as awarded by the Tribunal. The enhanced amount of compensation be

deposited with the learned Tribunal within a period of 60 days from today, failing which the appellants-claimants shall be entitled to interest @ 7.5% per annum from the date of filing the claim petition till realisation. The liability to pay the enhanced amount and the apportionment amongst the claimants shall remain as determined by the learned Tribunal in the main award.

20.12.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No