IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.2131 of 2011 (O&M)

Date of decision : 08.09.2016

Smt. Savita Jain

......Appellants

Versus

Bawa Ramandeep Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Gopal Sharma, Advocate for appellant.

None for respondent No.1.

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.3.

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DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-claimant against the award dated 02.11.2010 passed by the learned Motor Accidents Claims Tribunal, Panchkula (hereinafter called the "Tribunal") whereby the appellant-claimant has been awarded compensation to the tune of Rs.1,77,000/- on account of death of her husband Darshan Jain in the present motor vehicular accident, which took place on 15.10.2008.

2. The present appeal has been preferred by the appellant-claimant 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 appellant contended that learned

Tribunal has wrongly deducted the amount of family pension from the income of the deceased. He was getting the pension at the rate of Rs.14,263/-. The entire amount of his pension should have been taken into consideration to compute the compensation.

5. He further contended that the claimant has been awarded only Rs.5000/- towards loss of consortium and Rs.10,000/- towards funeral and last rites expenses. Thus, he contended that the just amount of compensation have not been awarded.

6. On the other hand, learned counsel for respondent-Insurance Company contended that there was no financial loss to the claimant as she was getting the family pension after the death of her husband. She herself was the government employee. So, the learned Tribunal has rightly taken the loss of dependency at the rate of Rs.1500/- per month and has rightly assessed the amount of compensation.

7. I have duly considered the aforesaid contentions.

8. It is an admitted fact that at the time of his death, deceased Darshan Jain was getting the pension at the rate of Rs.10,298/- per month and on account of the revision of pay scales after sixth pay commission his pension was increased to Rs.14,263/-. The learned Tribunal has assessed the monthly loss of dependency only at the rate of Rs.1500/- per month on the ground that the claimant herself was serving with the Punjab State Small Industries Corporation and she was also getting family pension after the death of her husband Darshan Jain in this accident. The view taken by the learned Tribunal is erroneous. The respondent being the tortfeasors cannot

take the benefit of the personal income of the claimant which she was getting as salary from the Punjab State Small Industries Corporation. Even if the claimant was herself employed, still she was also dependent upon the income of her husband. Thus, it cannot be stated that she was not dependent upon the income of the deceased or has not suffered any financial loss on account of death of her husband.

9. It is settled principle of law that the family pension cannot be deducted from the income of the deceased. In case ***Arati Chakraborty and others Vs. Nephurai jamatia and another 2007 ACJ 1698***, the Hon'ble Gauhati High Court has laid down that while computing the compensation the family pension received by the widow of the deceased is not deductible. The Hon'ble Apex Court in case ***Lal Dei and others Vs. Himachal Road Transport 2008 ACJ 1107*** has also laid down as under:-

> *"It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accidents Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accidents Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In the case of* **Mrs. Helen C. Rebello and others Vs. Maharashtra State Road Transport Corpn. And another reported in 1998(4) RCR (Civil) 177 : AIR 1998 page 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."*

10. The Division Bench of Hon'ble Madhya Pradesh High Court has also in case ***Vimaladevi and others Vs. Ram Chandra and others 2010 ACJ 569*** has laid down that the family pension payable to the widow should not be deducted for determining the amount of compensation.

11. Thus, the family pension being received by the appellant-claimant cannot be deducted from the income of the deceased. Consequently the income of the deceased shall be taken to be Rs.14,263/- per month *i.e.* Rs.1,71,156/- per annum. The present claim petition has been filed only by the widow of the deceased. The deceased was not having any other dependent except his widow, so 50% of the income of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.85,578/- per annum. At the time of his death, the deceased was 60 years and 04 months of age. So, the multiplier of 7 shall be applicable. The loss of dependency comes to Rs.5,99,046/-.

12. The learned Tribunal has awarded only Rs.5000/- as loss of consortium to the claimant, which is enhanced to Rs.1,00,000/-. Similarly, the learned Tribunal has awarded only Rs.10,000 towards funeral and last rites expenses, which is also enhanced to Rs.25,000/-.The total amount of compensation comes to Rs.7,24,046/-, to make it a round figure, we can take it as Rs.7,24,000/-.

13. Therefore, the appellant-claimant shall be entitled to a sum of Rs.7,24,000/- as compensation on account of death of her husband in this accident.

14. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellant-claimant is enhanced to Rs.7,24,000/- from Rs.1,77,000/- as awarded by the Tribunal. The appellant-claimant shall also be entitled to interest at the rate as determined by the learned Tribunal on the enhanced amount from the date of filing the petition till realisation. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

08.09.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No