

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

**FAO No.1673 of 1998 (O&M)
Date of Decision: June 02, 2017**

State of Punjab and another

..Appellant(s)

Versus

Poonam Malik and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. M.S. Naryal, Addl. A.G., Punjab.

Mr. Gagandeep Singh, Advocate
for respondent nos.1 to 3.

ANITA CHAUDHRY, J.

This appeal is by the owner against the award dated 07.03.1998, passed by the Motor Accident Claims Tribunal, Gurdaspur.

The record of this file had been burnt in the fire incident which had taken place in the year 2011. Only the copy of the award could be reconstructed. None of the parties could give any material for reconstruction of the record. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

A claim petition under Section 166 of the Motor Vehicle Act seeking compensation for the death of Kaushal Kumar was filed.

He was a Head Constable with Punjab Police and was getting salary of Rs.4,000/- per month. The claimants were the widow, the minor children and the mother. The Tribunal found that the deceased was getting salary of Rs.3,434/- per month and calculated the compensation of Rs.3,84,000/- and apportioned the amount to all the claimants.

The State of Punjab has filed this appeal on the ground that the widow was given compassionate appointment and she was also getting family pension of Rs.875/- per month, therefore, that amount should have been adjusted.

I have heard learned counsel of both the sides.

Counsel for the appellant has placed reliance upon ***Lal Dei & Ors. Vs. Himachal Road Transport 2007(8) SCC 319*** and urged that since the widow had got compassionate appointment and she was also getting the pension, therefore, the benefits which were received by the claimants on account of death should have been deducted.

On the other hand the submission was that the Apex Court in ***Vimal Kanwar & Ors. Vs. Kishore Dan & Ors. 2013(2) RCR (Civil) 945*** had considered this aspect and had held that the pecuniary advantage given to the wife of the deceased by way of compassionate appointment was not liable for deduction. It was urged that the Apex Court had also considered the case of ***Helen C. Rebello(Mrs.) V. Maharashtra State Road Transport Corporation, 1998(4)RCR (Civil) 177.***

The issues raised in **Vimal Kanwar's** case (supra) are noted in para no.15 of the judgment, which read as under:-

- (i) *Whether Provident Fund, Pension and Insurance receivable by the claimants come within the periphery of the [Motor Vehicles Act](#) to be termed as “Pecuniary Advantage” liable for deduction.*
- (ii) *Whether the salary receivable by claimant on compassionate appointment comes within the periphery of the [Motor Vehicles Act](#) to be termed as “Pecuniary Advantage” liable for deduction.*
- (iii) *Whether the income tax is liable to be deducted for determination of compensation under the [Motor Vehicles Act](#) and*
- (iv) *Whether the compensation awarded to the appellants is just and proper.*

It is necessary to notice the observations made in para nos.19 & 20, which read 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.”

20. The second issue is “whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the [Motor Vehicles Act](#) to be termed as “Pecuniary Advantage” liable for deduction.”

“Compassionate appointment” can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness i.e. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount

receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as “Pecuniary Advantage” that comes under the periphery of [Motor Vehicles Act](#) and any amount received on such appointment is not liable for deduction for determination of compensation under the [Motor Vehicles Act](#).

The issue has been settled, it is held that the benefit which the widow had received on getting the compassionate appointment or in the shape of salary, would not be deducted or adjusted.

The appeal is dismissed.

June 02, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No