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

FAO No. 5789 of 2012 (O&M)
Date of Decision: 11.05.2017

Swaran Kaur & Ors.

... Appellants

vs.

Paramjit Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. S.S. Sodhi, Advocate
for the appellants.**

**Mr. Rajbir Singh, Advocate
for respondent No.3.**

ANITA CHAUDHRY, J.

This is the claimants' appeal seeking enhancement in the award dated 05.09.2012 passed by the Motor Accident Claims Tribunal, Rupnagar(for brevity, the Tribunal).

Harjaib Singh, a Peon in the Government High School Mandwara met with an accident on 11.06.2011. The claim petition was filed by his wife and two sons, both over 18 years. The claimants led evidence to show that Harjaib Singh was drawing salary of Rs.19488/- per month. It also appeared on record that his elder son got a job in place of his father and was getting salary of Rs.11,000/- per month. The widow was getting pension of Rs.6000/- per month. The Tribunal observed that the family had been compensated by the Government by giving compassionate appointment and also pension and therefore considered the loss to be Rs.6000/- per month and after deducting 1/3rd the dependency was taken Rs.4000/- per month and applying the multiplier of 11, the compensation was calculated as Rs.5,28,000/-. A sum of Rs.12,000/- was allowed for loss of consortium and Rs.10,000/- on account of funeral expenses, raising the total to Rs.5,50,000/-.

The submission on behalf of the appellants is that the family pension could not be deducted for computing the pension as laid down in **Vimal Kanwar & Ors. Vs. Kishore Dan & Ors. 2013 (2) RCR(Civil) 945** and the last drawn salary should be taken as income and Rs.1 lakh should have been awarded for loss of consortium and Rs.25,000/- as funeral expenses. It was urged that Rs.1 lakh should have been allowed for loss of love and affection for the children.

The submission, on the other hand, was that the compassionate appointment had been granted to the son who would get full salary and the widow was getting pension which is half of the salary and this amount should have been considered by the Tribubal.

Apex Court in Vimal Kanwar's case (supra) had considered at length the proposition as to whether the salary received by the claimant on compassionate appointment would be considered as a pecuniary advantage which was liable for deduction and it was held that there was no co-relation with the amount recoverable under a statute occasioned on account of accidental death and was not liable to be deducted. The Tribunal had wrongly made a deduction. The last drawn salary should have been considered to compute the loss. Taking the income to Rs.19,500/-(rounded) per month and giving an increase of 15% towards future prospects as he was a permanent employee, the income for computation would be Rs.22,425/-. Since both the children were major, (the son had got a job) a deduction of 1/3rd should be made and the amount available for the family would be Rs.14,950/- per month and the annual dependency would comes to Rs.1,79,400/- and applying the multiplier of 11, the compensation would comes to Rs. 19,73,400/-. To this, a sum of Rs.1 lakh should be added for loss of consortium and Rs.25,000/- for funeral expenses, raising the total to Rs.20,98,400/-. The Tribunal had allowed Rs.5,50,000/- which would be deducted and the remaining amount would be payable with interest @ 6% from January, 2013 onwards. The amount would be paid after deducting income tax. Out of the enhanced amount, claimants No.2 and 3 would be entitled to Rs.4 lacs each, the remaining enhanced amount would be paid to claimant No.1 Swaran Kaur. The payment would be made by draft.

The appeal is partly allowed.

11.05.2017 **(ANITA CHAUDHRY)**
Jiten **JUDGE**

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No