

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

FAO-1498-2014 (O&M)
Date of decision: 19.09.2017

Daljeet Kaur and others

.... Appellants

Versus

Avtar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Rakesh Nagpal, Advocate
for the appellants.

None for respondent No.1.

Mr.Subhash Goel, Advocate for
Mr. Nitin Mittal, Advocate
for respondent No.2.

Mr. Ravi Partap, AAG, Haryana
for respondents No.3 and 4.

Mr. Vinod Gupta, Advocate
for respondent No.5.

Avneesh Jhingan, J.

Present appeal has been preferred by the claimants against the award dated 09.12.2013 passed by Motor Accidents Claims Tribunal, Sirsa (hereinafter referred to as the 'Tribunal').

The facts noted in the present appeal are that on 09.05.2012, Balwinder Singh lost his life in an accident involving a bus bearing registration No.HR-57-3063 and a canter bearing registration No.PB-10-BT-3844. FIR No.51 dated 09.05.2012 was registered at Police Station Ismailabad.

The claim petition under Section 166 of the Motor Vehicles Act,

1988 (for short, 'the Act') filed by the claimants and the Tribunal after considering the witnesses and evidence, awarded a sum of Rs.8,57,720/- along with interest @ 7.5% per annum.

There is no dispute on the facts of the case by either of the parties. The only issue raised in the present case is that at the time of awarding the compensation, the Tribunal had deducted the pension of the deceased.

I have heard the learned counsel for the parties and have perused the paperbook with their able assistance.

Learned counsel for the appellant has argued that the Tribunal while calculating the dependency, pension of Rs.7600/- being drawn by the wife has been deducted and further it has been argued that nothing has been awarded under the head for loss of love and affection.

Learned counsel for the respondent vehemently defended the award and argued that no interference is called for and sufficient amount has been awarded by the Tribunal.

Both the issues raised by learned counsel for the appellants are no longer res-integra. The issue deducting the family pension has been dealt with in Supreme Court's case reported as **Vimal Kanwar and others vs. Kishore Dan and others, 2013 AIR (SC), 3830.** The Hon'ble Apex Court relying upon in its earlier decision **Helen C.Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation and another, 1998(4) R.C.R.(Civil) 177 : (1999) 1 SCC 90** has held 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. 1998\(4\) R.C.R.\(Civil\) 177 : \(1999\) 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.”*

From the perusal of the above decision, it is clear that pension was not to be deducted by the Tribunal while calculating the dependency compensation.

With regard to the claim for the loss of love and affection.

Hon'ble the Apex Court in **Asha Verman and others Vs.**

Maharaj Singh and others, 2015(4) SCC (Civil) 767, held as under:

*“17. Further, the High Court has erred in awarding only Rs.5,000/- each towards loss of estate, funeral expenses and loss of consortium. We award Rs.1,00,000/- towards loss of estate according to the principles laid down in the case of **Kalpanaraj & Ors. v. Tamil Nadu State Transport Corporation, 2014 (2) R.C.R.(Civil)***

876: 2014 (3) Recent Apex Judgments (R.A.J.)
112: 2014 (5) SCALE 479, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards loss of consortium as per the principles laid down by this Court in the case of **Rajesh & Ors. Vs. Rajbir Singh & Ors.**, 2013 (3) R.C.R. (Civil) 170; 2013 (3) Recent Apex Judgments (R.A.J.).659; (2013) 9 SCC 54.

18. Further, we award Rs.1,00,000/- each to the appellant-children towards loss of love and affection due to the loss of their father(deceased) as per the decision of this Court in the case of **Juju Kuruvila & Ors. vs. Kunjamma Mohan & Ors.**, 2013(3) R.C.R. (Civil) 817 : 2013(4) Recent Apex Judgments (R.A.J.) 364 : (2013)9 SCC 166. Further, a sum of Rs.50,000/- is awarded to each of the appellant-parents towards loss of love and affection of their deceased son as per the principles laid down by this Court in the case of **M Mansoor & Anr. vs. United India Insurance Co.Ltd.**, 2013(4) R.C.R.(Civil) 729 : 2013(5) Recent Apex Judgments (R.A.J.) 516 : 2013 (12) SCALE 324.

A perusal of the above decision shows that Hon'ble the Apex

Court has enhanced the compensation awarded by the High Court under the Heads-loss of estate, funeral expenses and loss of consortium and also awarded compensation under the head of loss of love, care and guidance of the minor children.

Hon'ble the Apex Court in ***Rajesh and others Versus Rajbir Singh and others***, 2013 (9) SCC 54, has held as under:

"The ratio of a decision of this Court, on a legal issue is a precedent. But an observation made by this Court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santhosh Devi (supra). We may therefore, revisit the practice of awarding compensation under conventional heads; loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2500/- to Rs. 10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased."

A perusal of the above decisions shows that the compensation under the heads mentioned therein is to be awarded and further need to be increased from time to time.

As per the law laid down in the above decisions, amount is awarded under the head for loss of love and affection.

The Tribunal has deducted Rs.7600/- per month and had applied the multiplier of 9. The claimants are entitled to compensation on the amount of pension deducted i.e. $\text{Rs.}7600 \times 12 \times 9 = \text{Rs.}8,20,800/-$ and another amount of Rs.1 lakh under the head for loss of love and affection is awarded.

The award dated 09.12.2013 is modified to the extent that the claimants would be entitled to further amount of Rs.9,20,800/-.

The enhanced compensation would be given to the claimants along with 6% interest from the date of filing the claim petition till the realisation of the amount.

The appeal is partly allowed.

(AVNEESH JHINGAN)
JUDGE

19.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes