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

**FAO No. 5674 of 2013 (O&M)
Date of Decision: 11.05.2017**

United India Insurance Co. Ltd.

... Appellant

vs.

Bimla Devi and others

... Respondents

with FAO No. 730 of 2014

Bimla Devi & Ors.

... Appellants

vs.

Naresh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Paul S. Saini, Advocate for
United India Insurance Company
(Appellant in FAO 5674/14 and
respondent No.3 in FAO 730 of 2014)**

**Mr. Harish Nain, Advocate for
claimants Bimla Devi & Ors. in
FAO No. 730 of 2014 and
respondents No.1 5 in FAO No. 5674 of 2013.**

ANITA CHAUDHRY, J.

These are two appeals, one filed by the Insurance Company and the other by claimants against the award dated 03.07.2013 passed by the Motor Accident Claims Tribunal, Jind(for brevity, the Tribunal).

An accident took place on 09.09.2012 in which Dalbir Singh, a Constable died. He was drawing salary of Rs. 18706/-, which included the basic pay, DA and other heads. The Tribunal after deducting the allowances took the income at Rs. 16,253/-. The Insurance Company took the plea that there was no loss of income as the widow was getting full salary and financial assistance @ Rs. 16753/- per month up to the date of retirement of the husband in terms of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006(hereinafter to be referred as 'the Rules') and therefore that deduction should be made. The Tribunal held that the widow would get the salary for 12 years and thereafter she would get pension. The deceased was 35 years of age at the time of accident. It was held as under:-

> *"25. Hence, the claimants are also entitled to get compensation on account of loss of salary for the remaining period of 11 years less family pension till the date of his retirement at the age of 58. As discussed above, had the deceased not died till the age of his superannuation, he would have get his entire salary of around Rs.16,253/- plus annual increments and other service benefits, but due to his untimely death, the claimants would be entitled to family pension only after the aforesaid period of 12 years from the date of his death at the age of 35 years. Hence it is evident that they have suffered pecuniary loss to this extent. As per Rule-VIII of Haryana Family Pension Rule (as provided in the Pension Guidelines), claimants would be*

> *entitled to 30% of his last drawn salary towards family pension; meaning thereby causing loss of 70% of his salary after deducting 30% of family pension comes to Rs.11,377/- per month (Rs.16,253/- minus Rs.4,876/-) i.e. Rs.1,36,524/- per annum. Thus, the claimants are also held entitled to loss of 70% of the salary for the remaining 11 years which comes to Rs.15,01,764/- (Rs.1,36,524/- X 11)...."*

A sum of Rs.20,000/- was awarded for loss of consortium and loss of love and affection, Rs.5000/- for loss of estate and Rs.10,000/- for funeral expenses.

In Para 27 taking the wages of a casual labour, the Tribunal also held the claimants entitled to Rs.54000/- annually on account of loss of gratuitous services to be rendered by the deceased towards the family. A multiplier of 16 was applied and the amount under this head was calculated at Rs.8,64,000/-.

An award of Rs.24,00,764/- was awarded in favour of the claimants along with interest @ 9% per annum.

Out of the awarded amount, a sum of Rs.12 lakhs was ordered to be paid to the widow and Rs.5 lacs each to two minor children while Rs.1,00,382/- each to the parents of the deceased was ordered.

The Insurance Company has filed the appeal seeking modification in the award as the amount that was allowed was on the higher side and the Tribunal had failed to adjust the amount which was allowed as full salary to the widow. They have also disputed the addition of Rs.8,64,000/- towards gratuitous services of the deceased towards the claimants.

The claimants, on the other hand, are seeking enhancement of the award on the plea that the Tribunal had erred while granting only Rs.25000/- towards loss of consortium and are also seeking addition of Rs.1 lakh to the widow and Rs.1 lakh to the minor children on the head of loss of love and affection. Rs.15,000/- more for the last rites.

Counsel for the Insurance Company refers to **Reliance General Insurance Company Limited Vs. Shashi Sharma & Ors. 2016(4) RCR(Civil) 569,** wherein the Apex Court had considered the case reported as **New India Assurance Company Vs. Smt. Santosh, 2010(4) PLR 780** and **Vimal Kanwar Vs. Kishore Dan, 2013(2) RCR(Civil) 945** and it was considering the issue, whether any deduction should be made where the dependent of the deceased Government employee gets financial assistance equivalent to the loss of pay and wages of the deceased employee for the specified period and it was held that no double benefits could be passed on to the claimant in the matter of award of compensation and the benefits which were given to the dependents of the deceased employee under the Rules have to be deducted. It was urged that the deceased was 35 years old and if the calculations are made again, the amount has been paid in excess and would be recoverable. It was urged that the widow would get salary for 12 years and the amount works out to Rs.24,12,432/-.

On the other hand, the submission is that an addition of 50% has to be made for future prospects, which was not done by the Tribunal below and calculations have to be made again and they were entitled to higher amount for the loss of love and affection, loss of consortium and funeral expenses. It was urged that full salary should have been considered and no deduction should have been made.

No deductions should have been made and gross salary should have been taken into account. Taking the income to be Rs.18,706/- per month and making an addition of 50% (Rs.9353/-)as future prospects, the total comes to Rs. 28,059/-. After making a 1/3rd deduction as mother was not dependent on son in presence of her husband, the amount available would be Rs. 18706/- per month. Applying the multiplier of 16, the amount comes to Rs. 35,91,552 (18706x12x16). To this, a sum of Rs.1 lakh should be added for the loss of consortium, Rs.1 lakh for the loss of love and affection to the minor children and Rs.25,000/- for funeral expenses, which raises the total to Rs. 38,16,552/-.

It is not disputed that the widow would get salary @ Rs.16753/- per month for 12 years which comes to 16753x12x12 = Rs.24,12,432/-. This amount has to be deducted as per latest judgment in Reliance case(supra). The amount that was payable was Rs. 14,04,120/-. During arguments the counsel for the Insurance Company had informed that the amount had already been paid. The excess amount would be recoverable from the claimants and would be paid back in four months from today, failing which the amount would be returned with interest @ 6% per annum. The appeal filed by the Insurance Company is allowed. The appeal filed by the claimant is dismissed.

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

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No