IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1276 of 2018 (O&M)
Date of Decision: April 17, 2018

National Insurance Company ...Appellant

Versus

Ikattar Kaur and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Neeraj Khanna, Advocate
for the appellant - insurer.

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HARINDER SINGH SIDHU, J.

For the reasons stated in the applications, the delay of 10 days in filing the appeal and of 36 days in re-filing the appeal is condoned.

The National Insurance Company Limited has filed the present appeal challenging the award dated 19.08.2017 of the Motor Accident Claims Tribunal, Bathinda (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 7.3.2015 in the area of Village Singhawala, a vehicular accident took place involving Bolero Jeep No.PB-07U-7986 (herein for short 'the offending vehicle'), wherein, Jagir Singh Gill lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

The Tribunal assessed the loss of income of the deceased at Rs.41,400/- per month i.e. Rs.4,96,800/- per annum and deducted 1/3rd towards his personal expenses. The annual loss of dependency was assessed at Rs.3,31,200 (496800-165600) and multiplier of 7 (deceased aged 62 years) was applied. The loss of dependency was assessed at Rs.23,18,400 (331200x7). Amount of Rs.1,00,000/- towards 'loss of consortium' and Rs.25,000/- as 'funeral expenses' was also awarded. In all, compensation of Rs.24,43,400/- along with interest was awarded. Besides the claimants were held entitled to a sum of Rs. 74851/- on account reimbursement for medical treatment.

Ld. Counsel for the appellant – insurer has argued that the Tribunal erred in holding that the accident was caused due to rash and negligent driving of the offending vehicle as the FIR had been recorded after two months of the accident. Secondly, it is stated that the loss of income assessed by the Tribunal is on higher side as widow of the deceased has been getting Rs.65,668/- per month as pension after the death of Jagir Singh Gill and, thus, it is contended that there is no loss of income to the claimants. Further, it is contended that higher amount has been awarded under the conventional heads.

I have heard Ld. Counsel for the appellant and gone through the paper-book with his assistance.

On the issue of negligence, the Tribunal examined Balwant Singh (CW6), an eye witness of the accident, who deposed that on 7.3.2015, Jagir Singh Gill (deceased) along with Gurdeep Singh was going to village Rode from Moga in car bearing No.JH-01AD-3653. At around 7.00 pm, when they reached in the area of power grid of village Singhawala, a vehicle make Bolero bearing No.PB-07U-7986 (offending vehicle) came from the opposite side in a rash and negligent manner and struck against the car. As a result, both the occupants of the car suffered multiple injuries. The witness was cross-examined at length, but nothing could be elicited so as to discard his version of the accident.

Relying on the above oral evidence as also the registration of FIR (Ex.C16), report under Section 173 Cr.P.C. (Ex.C4) and copy of charge-sheet dated 17.8.2015 (Ex.C3), the Tribunal held that the accident was caused due to rash and negligent driving of the offending vehicle.

So far as the delay in lodging the FIR is concerned, it cannot be fatal to the case of the claimants, as it is not the sole basis of the findings of the Tribunal. It is well-settled that the mere registration of an FIR may not be the sole basis for returning a finding of negligence, but it can only be considered as material to form a prima facie view. In the instant case, oral evidence regarding the rash and negligent driving of the offending vehicle is on record, which gets support from the FIR. The police also filed a report under Section 173 Cr.P.C. against the driver of the offending vehicle. Further, finding a prima-facie case against the driver of the offending vehicle the Ld. CJM, Moga vide order dated 17.08.2015 charge-sheeted him and he was facing trial in the criminal case. Thus the issue of negligence has been rightly decided by the Tribunal.

Coming to the point of assessment of compensation, the deceased was an Ex-Service Man. He was working as Officer-Incharge with ECHS Polyclinic, Moga. Ex.C11, copy of his salary certificate was produced on record, which proved that after deduction of income tax, the deceased was getting salary of Rs.41400/- per month. Besides he was getting Rs. 40,000/-

per month as pension being a retired Lt. Colonel from the Army. The Ld. Tribunal held that there was no loss to the claimants on account of the pension received by the deceased as the widow of the deceased was getting family pension of Rs. 65668/- per month. So the only loss that occurred to the claimants was qua the salary of Rs. 41400/- being drawn by the deceased. Compensation was assessed accordingly.

On the issue of deduction of the family pension from the income of the deceased, while assessing the loss of dependency, the matter was examined by the Apex Court in **Helen C. Rebello v. Maharashtra State Road Trans. Corpn., 1999(1) SCC 90** and it was held that family pension is not to be deducted while assessing the loss of income to the dependants of the deceased employee. It was observed:

> *"30. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record herein both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the 'pecuniary gain' only on the account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any*

provisions of law.

31. 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 co- relation 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 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 insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on 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 co-relation 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 similar and same plane having nexus inter se between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against tortfeasor for his negligence on account of 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 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."

This view was reiterated by Hon'ble Supreme Court in **Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others 2016 (9) SCC**

627, while observing that the benefits like family pension must remain unaffected and cannot be allowed to be deducted while assessing a just compensation under the Motor Vehicles Act. In the said case, Hon'ble Supreme Court while taking into consideration the benefits to the family of a deceased employee under the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006, observed:

> *"... ... ... The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C. Rebello and Patricia Jean Mahajan's cases (supra)."*

In view of above, there is no merit in the argument of Ld. Counsel that the family pension being received by the widow of the deceased, be deducted while assessing the loss of dependency to the claimants – respondents. However, the amount of Rs.1,25,000/- awarded under the conventional heads, ought to have been Rs.70,000/- as per the decision of the Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, AIR 2017 SC 5157.** Hence, the compensation would be reduced by Rs.55,000/- (125000-70000).

Hence, the appeal is disposed of with modification in the impugned award only to the extent that the claimants – respondents are held entitled to total compensation of Rs.24,63,251/- (2518251-55000) along with interest.

The appeal has been disposed of without notice to the respondents – claimants to avoid unnecessary delay and expense. A copy of this order be conveyed to the claimants-respondents No.1 and 2. In the event of the said respondents having any objection, they may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

April 17, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No