214 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
(2 cases) AT CHANDIGARH

1. FAO No.5432 of 2014 (O&M)
Date of Decision: 03.07.2019

National Insurance Company Limited
.....Appellant

Versus

Rajni @ Rajni Bala and others
........Respondents

2. FAO No.4743 of 2014

Rajni @ Rajni Bala and others
.....Appellants

Versus

Vipin Sharma and others
.......Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Ashwani Arora, Advocate
for the appellants in FAO No.4743 of 2014 and
for respondent Nos.1 to 5 in FAO No.5432 of 2014.

Mr. S.S. Sidhu, Advocate
for the appellant in FAO No.5432 of 2014 and
for respondent No.3- Insurance Co. in FAO No.4743 of 2014.

NIRMALJIT KAUR, J. (ORAL)

CM-15152-CII-2014 in FAO-5432-2014

For the reasons mentioned in the application, the same is allowed and the delay of 26 days in filing of the appeal is condoned.

CM stands disposed of.

Main cases

Both the above appeals shall stand decided by this common order arising out of the same award and between the same parties.

FAO No.5432 of 2014 is filed by the National Insurance Company Limited challenging the award dated 14.01.2014 passed by the Motor Accident Claims Tribunal, Chandigarh (for short, the Tribunal) and praying for modifying the award by making the deduction of the dependency in view of the appointment having been granted to the widow on compassionate ground and is now drawing a salary of ₹12,000/- per month by adjusting ₹1,44,000/- per annum as the loss of dependency. Reliance was placed on the judgment rendered by the Hon'ble Apex Court in the case of *Reliance General Insurance Co. Ltd. Versus Shashi Sharma and others, 2016 (4) R.C.R. (Civil) 569*, wherein, it was held that Insurance Company is entitled to deduct the amount receivable by the dependents of the deceased Government employee towards financial assistance granted to the claimants equivalent to the loss of pay and wages of the deceased employee as no double benefit can be passed on to the claimants in the matter of award of compensation. Reliance was also placed on the judgment rendered by the Hon'ble Apex Court in the case of *Bhakra Beas Management Board Versus Kanta Aggarwal, 2008 (11) SCC 366*, wherein it was held that the benefits, which the claimants received on account of death or injury have to be duly considered while fixing the compensation.

The arguments of learned counsel for the appellant-Insurance Company cannot be sustained. There is no dispute with the law laid down by the Hon'ble Apex Court in the case of *Reliance General Insurance Co. Ltd. (supra)*. However, the same does not help the appellant-Insurance Company in the facts of the present case. In the case before the Hon'ble Apex Court, the compassionate appointment was granted to the widow by the same employer, who was also held liable for the compensation under the motor accident claims and was made to pay the compensation for the said accident. Hence, one employer could not be burdened twice over.

Therefore, the income earned through compassionate appointment is out of once labour & contribution and after giving up once time and compromising with her time spent on bringing up her children and looking after the home. There cannot be co-relation between the two amounts. Hence, the said amount received on account of compassionate appointment cannot be allowed to be deducted towards the future loss of income in the facts of the present case.

Accordingly, FAO No.5432 of 2014 filed by the insurance company is dismissed.

The second appeal bearing FAO No.4743 of 2014 is filed by the claimants for enhancement on the ground that while taking into account loss of income of the deceased, the net salary has been taken into consideration and not the gross salary. His gross salary was admittedly ₹28,950/-. It was a permanent job with bright future prospects. His gross salary i.e. ₹28,950/- should have been taking into consideration, whereas, his net salary of ₹24,330/-was taken into consideration while granting the future prospects.

Reliance was placed on the judgments rendered by the Hon'ble Apex Court in the cases of *Yerramma and others Versus G.Krishnamurthy and another, 2015 AIR (SC) 1145* as well as *Sunil Sharma and others Versus Bachitar Singh and others, 2011 (11) SCC 425*, vide which, the order of the High Court in not taking gross income of the deceased to determine the loss of dependency was set aside being erroneous in law.

The second ground for seeking enhancement is the deduction made by the Tribunal to the extent of 1/3rd instead of 1/4th. The deceased had left large family consisting of widow, minor daughter, minor son and aged parents. It has been held by Hon'ble the Apex Court in the case of *Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 ACJ 1298*, where the dependents are four to six, 1/4th may be deducted from the income of the deceased as the personal expenditure. However, the Tribunal fell in error in taking it as 1/3rd.

Learned counsel for the respondent-Insurance Company is not in a position to dispute the settled proposition of law in view of the terms of the judgment rendered by the Hon'ble Apex Court in the case of *National Insurance Company Ltd. versus Pranay Sethi and others, (2017) 16 SCC 680.* Therefore, the award is requires to be modified as under:-

Sr. No.	Head	Amount assessed
1	Income	₹3,47,400/- per annum (28950 x 12 = ₹3,47,400/-)
2	Tax rebate	Upto ₹2,00,000/- Taxable amount = 3,47,400 - 2,00,000 = ₹1,47,400/-
3	Future Prospects @ 50%	(3,47,400 x 50% = ₹1,73,700) 3,47,000+1,73,700 = ₹5,21,100
4	Tax liability @ 10% of ₹1,47,400/-	5,21,100 – 14740 = ₹5,06,360/-
5	Deduction 1/4th	5,06,360 – 1,26,590 = ₹3,79,770/-
6	Multiplier @ 16	3,79,770 x 16 = ₹60,76,320/-
7	Conventional Heads	₹70,000/-
8	Total	₹61,46,320/-
9	Compensation awarded by the Tribunal	₹47,90,600/-
10	Differences	₹61,46,320 – 47,90,600 = ₹13,55,720/-

The Tribunal has awarded compensation of ₹47,90,600/-.

In view of the above, the award passed in FAO No.4743 of 2014 is modified as above. After deducting ₹47,90,000/- from ₹61,46,320/-, the appellants have to be paid enhanced compensation of ₹13,55,720/- over and above the amount already granted. The amount be accordingly deposited in the same terms as ordered by the Tribunal alongwith interest @ 6% per annum from the date of the claim petition till realization.

(NIRMALJIT KAUR)
JUDGE

03.07.2019
sandeep

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No