IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.245 **FAO No.5984 of 2019 (O&M)**
Date of Decision: 20.12.2022

United India Insurance Company Limited .... Appellant

Versus

Jaswinder Kaur @ Bakhshis Kaur (now deceased)
through her LRs and others ... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Ram Avtar, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondent No.1.

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<u>TRIBHUVAN DAHIYA, J. (ORAL)</u>

This is insurance's appeal against the award passed by Motor Accident Claims Tribunal, Chandigarh, dated 21.02.2019.

2. The facts of the case in brief are, the deceased Gurmail Singh met with an accident on 18.10.2016. The respondents/claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of his death. The deceased was a retired Lance Naik from the Indian Army and was getting pension at the time of his death. He had applied in the Soldier Welfare Office, Ferozepur, and also PRTC (Punjab Road Transport Corporation) seeking employment as a driver. At the time of the death, as per finding of the Tribunal, the pension drawn by the deceased was ₹17,607, which was rounded off to ₹17,610. It was also held that the deceased was Class-I by DNDT Trade, which was equivalent to civil trade of driver bus/truck as per the National Council of Training for

Vocational Trades/National Apprentice Certificate. Since he had proper training for the post of driver, his monthly income was assessed as that of a skilled labourer as ₹8,775 per month. By adding the amount of pension, his total monthly income was assessed to be ₹26,385 (₹17,610+ ₹8,775). As the deceased was 37 years of age, an addition of 40% of the assessed income was awarded as future prospects. By applying multiplier of 15, and deducting 1/3rd of the assessed income towards personal living expenses, total compensation of ₹42,69,450 was awarded to the respondents/claimants.

3. The only argument by learned counsel for the appellant is that the Tribunal wrongly assessed monthly income of the deceased by adding the amount of pension payable to him as retired Lance Naik from the Indian Army. He submits that amount of pension needs to be deducted from his monthly income for assessing the amount of compensation, otherwise it will be undue enrichment.

4. *Per contra*, learned counsel for the respondents contends that the award is as per the settled law, and the amount of pension has been rightly included as part of the deceased's income.

5. The argument raised by learned counsel for the appellant is misconceived. The pension was earned by the deceased by rendering service in the Indian Army, which had no concern with Act of 1988 or the claim raised thereunder. Besides, whatever he would have earned in life post-retirement, that would have been in addition to the pension he was drawing. There is no evidence to the contrary on record.

6. Further, the issue whether the amount of pension, provident fund and insurance receivable by the claimants can be termed as pecuniary advantage for awarding compensation under the Motor Vehicles Act, 1988, has been settled by law laid down by Supreme Court of India in *Halen*

C.Rebello v. Maharashtra State Road Transport Corporation 1999 ACJ 10 (SC), and reiterated in *Vimal Kanwar and others v. Kishore Dan and others* 2013 ACJ 1441. The relevant para 19 of the latter judgment, which delineates the ratio, reads as under:

> 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 v. Maharashtra State Road Trans. Corpn., 1999 ACJ 10 (SC). 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.
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> xxx xxx xxx xxx

7. Therefore, the amount of pension is not to be termed as a pecuniary advantage liable for deduction under the Act of 1988. It cannot be said that the Tribunal committed any illegality in calculating the deceased's income by adding the amount of pension.

8. Appeal stands dismissed.

9. Pending miscellaneous application(s), if any, stand disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

20.12.2022
Maninder

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No