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

**FAO-4494-2022 (O&M)**

**Reserved on: 07.12.2022**
**Pronounced on:15.12.2022**

United Insurance Company Ltd. ........ Appellant

*Versus*

Manish Thapa and Others ......... Respondents

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present:- Mr.Vikas Mohan Gupta, Advocate,
for the appellant- Insurance Company.

****

**HARKESH MANUJA, J.**

**CM-13702-CII-2022**:

This is an application seeking condonation of delay of 48 days in filing the appeal.

For the reasons mentioned in the application, which are supported by an affidavit, sufficient cause has been shown for condoning the delay on account of change of office, thus, the same is allowed and delay of 48 days in filing the appeal is condoned.

**MAIN CASE**:

The present appeal lays challenge to an award dated 05.05.2022 passed by the learned Motor Accident Claims Tribunal, Pathankot (in brevity, 'the Tribunal'), whereby compensation of Rs.8,66,000/- has been awarded to respondent No.1 & 2/ claimants along with interest @7.5% per annum.

Claim petition filed at the instance of respondent No.1 & 2, on account of death of their mother Smt. Birla Thapa in an accident dated 26.09.2019, was partly allowed by the learned Tribunal and after considering her as a home maker and having assessed her income as Rs.9,000/- per month, awarded compensation of Rs.8,66,000/-.

Being aggrieved against the award dated 05.05.2022, the present appeal has been preferred by the appellant/ Insurance Company on the question of quantum of compensation.

Learned counsel for the appellant/ Insurance Company contends that assessment of notional income of deceased as Rs. 9,000/- per month, is on higher side and therefore, award is liable to be modified. In support of his contention, he places reliance upon **"Rajendra Singh and ors vs National Insurance Company Ltd. and ors"** reported as 2020(3) R.C.R(Civil) 26, in which the notional income of non earning housewife was considered at Rs.5,000/- per month and also on "**Kirti and anr vs Oriental Insurance Company Ltd.",** reported as 2021(1) R.C.R(Civil) 478, in which the notional income was assessed at Rs.5,547/- per month. He also places reliance upon the judgment of Hon'ble Apex Court in **"S. Chandrasekharan and others vs M. Dinakar and another", reported as 2022(3) R.C.R (Civil) 845,** to contend that deduction on account of personal expenses has not been made in the present case and therefore, on this account as well, the award is liable to be modified.

I have heard learned Counsel for the appellant- Insurance Company, however, I am unable to accept his contentions. In **Rajendra Singh's** case (supra), relied upon by him, accident took place in 2012 and similarly, in **Kirti's** case (supra), accident took place in 2014, so if during that period of time, income was assessed at Rs.5000-5500/-, then in the present case, where the accident occurred in 2019, if the notional income, on account of taking care of the family members, has been taken as Rs.9000 it cannot be said to be excessive in any manner. Even in **Kirti's** case (supra), it has been noted that different methods can be applied by the courts to assess the income in such cases, depending up on the facts and circumstance of particular case. It is further to be noted that the minimum wages in 2019 were much higher than the notional income assessed in the present case. Sight can also not be lost of the fact that in case of a male person, even if there is no evidence regarding the income, compensation is generally awarded after taking into consideration the minimum wages prevailing at that time. In my considered opinion, as the deceased was a non-earning female and her income has been quantified to a modest amount which is even less than the minimum wages, no interference is warranted in the monthly income assessed by the learned Tribunal.

With respect to the argument of learned counsel for the appellant- Insurance Company regarding the deduction on account of personal expenses also, I do not find much substance. No doubt, in above referred judgments, deduction has been made from the income, however it is to be noted that in **S. Chandrasekhran's case** (supra) as well as in **Kirti's** case (supra), monthly income of the deceased was assessed. In the specific scenario of present case, regarding deduction on account of personal expenses, when modest notional income has been assessed on account of her multifarious services, judgment of division bench of this Court in **"Paramjit Singh and another vs Dilbagh Singh alias Bagga and others"** in FAO No. 3310 of 2012 decided on 16.05.2013, is more applicable. In this judgment, it was held that when modest notional income is assessed as monthly value of her services and not her monthly income, the concept of deduction cannot be applied. In **Rajendra Singh's** case (supra), this specific law point was neither raised nor discussed. In the present case also, the income of the deceased on account of monthly income from tailoring was not taken into the consideration and only notional income was assessed on account of her multifarious services. The judgments relied upon by the appellant/ Insurance Company can also be differentiated on this account. Therefore, in my considered view, the deduction of 1/3rd from her modest income assessed out of her notional income is not warranted in the facts and circumstances of the present case.

In view of what has been discussed hereinabove, the appeal filed on behalf of appellant/ Insurance Company is hereby dismissed in limine.

Pending miscellaneous application(s), if any, shall also stand disposed of.

**December 15 , 2022** **( HARKESH MANUJA )**
anil **JUDGE**

| | |
|---|---|
| *Whether speaking/reasoned* | *Yes/No* |
| *Whether Reportable* | *Yes/No* |