

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-1041-2023 (O&M)
Date of Decision :16.03.2023

United India Insurance Company Limited

...Appellant

Versus

Poonam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.P. Gupta, Advocate for the appellant.

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Harsimran Singh Sethi, J. (Oral)

Learned counsel for the appellant-Insurance Company argues that the family pension being received by the widow of the deceased should have been reduced from the compensation, which has not been done by the Motor Accident Claims Tribunal, Narnaul while awarding the compensation hence, the said award dated 01.12.2022 is liable to be set aside.

A bare perusal of the paragraph 24 of the award dated 01.12.2022 would show that the said argument has already been taken into consideration and rejected keeping in view the judgment of the Hon'ble Supreme Court of India in **Hellen C. Rebello vs. Maharashtra State Road Corp., 1999, ASJ, 10, (SC).**

Learned counsel for the appellant Insurance Company has not been able to rebut that keeping in view the judgment of the Hon'ble Supreme Court of India in **Hallen C. Rebello (supra)**, as mentioned in para

24 of the award dated 01.12.2022 the award passed by the tribunal is perfectly valid and in consonance with the judgement of the Hon'ble Supreme Court of India in **Hallen C. Rebello (supra)** hence, the award needs no interference by this Court.

The argument of the learned counsel for the appellant-Insurance Company that in SLP No.21905-2020 titled as **United India Insurance Co. Ltd vs. Rafiq and others**, the notice of motion has been issued by the Hon'ble Supreme Court of India on this aspect but learned counsel for the appellant concedes the fact that judgment in **Hallen C. Rebello (supra)** is not under reconsideration and there is no interim order passed by the Hon'ble Supreme Court of India while issuing notice in the special leave petition.

Learned counsel for the appellant further submits that the carry home salary should have been taken into account while adjudicating the income of the deceased.

The Hon'ble Supreme Court of India in **Civil Appeal No.5830-2007** titled as **National Insurance Company Ltd. vs. Indira Srivastava and others** decided on 12.12.2007 has held that the net the salary can be taken into account for adjudicating the income of the deceased. Para 15 of the judgment in **Indira Srivastava (supra)** negates the argument raised by the learned counsel for the appellant hence, the same cannot be accepted.

Learned counsel for the appellant submits that the present is the case of contributory negligence hence, award of the Motor Accident Claims Tribunal, Narnaul is bad.

Nothing has been brought to the notice of this Court that there

was a contributory negligence. Rather clear cut finding has been recorded by the tribunal that the offending vehicle was being driven negligently.

No other argument has been raised.

Keeping in view the above, no interference is called for by this Court and the appeal is accordingly dismissed.

CM-4101-CII-2023

Application is also dismissed.

March 16, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No