

2023:PHHC:146663

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

(i) **FAO-2917-2014 (O&M)**

Reliance General Insurance Co. Ltd.

...Appellant

VERSUS

Rajni and others

...Respondents

(ii) **FAO-8330-2014 (O&M)**

Shakuntla and another

...Appellants

VERSUS

Manjeet and others

...Respondents

Date of Decision: November 17, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sanjeev Kodan, Advocate,
for the appellant (in FAO-2917-2014) and
for respondent No.3 (in FAO-8330-2014).

Mr.Shubhkarmann Singh Gill, Advocate for
Mr.Kshitij Sharma, Advocate
for respondent No.1 (in FAO-2917-2014) and
for performant respondent No.4 (in FAO-8330-2014).

Mr. Aditya Yadav, Advocate
for the appellants (in FAO-8330-2014) and
for respondents No.2 and 3 (in FAO-2917-2014).

ARCHANA PURI, J.

These are two appeals filed by the rival parties to assail the

Award dated 22.01.2014 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Jogender, in a motor vehicular accident, which took place on 03.03.2010.

On appraisal of the evidence, brought on record, vide impugned Award, learned Tribunal reached the conclusion that accident was caused due to rash and negligent driving of school bus bearing registration No.HR-47A-3924, driven by respondent-Manjeet, as a result whereof, Jogender, who was occupant of the ill-fated motorcycle bearing registration No.HR-43A-2840, had died.

So far as the fact of accident and the manner of the taking place of the same as well as the liability, so fastened upon driver, owner and insurer of the offending vehicle, is concerned, the same, as such, is not disputed.

However, FAO-2917-2014 has been filed by the Reliance General Insurance Company, only assailing the Award on the quantum of compensation as well as entitlement of Rajni, widow of deceased Jogender, to any compensation, on account of her re-marriage.

FAO-8330-2014 has been filed by the parents of the deceased, thereby, asserting denial of compensation to Rajni, widow of the deceased, who got re-married and further seeking enhancement of the compensation awarded to them.

At the very outset, learned counsel for the insurance company has assiduously submitted that learned Tribunal had erroneously worked upon the compensation, which is to the extent of Rs.18,19,992/-. Even, the interest granted is on higher side. Furthermore, it is submitted that Rajni-

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claimant No.1, who was widow of deceased Jogender, after the death of her husband, had performed second marriage on 20.11.2013 and as such, she is not entitled to any compensation. Besides the same, also it is submitted that the father of the deceased namely Suraj Bhan is also Ex-serviceman and therefore, he was not dependent upon the deceased. Moreover, he had three sons, as admitted by him and also has 3 acres of agricultural land and therefore, he cannot in any manner, be stated to be dependent upon the deceased. Considering the same, it is submitted that it is mother only, who is entitled to compensation. Being one dependent, therefore, deduction has to be to the extent of one-half instead of one-third, while working upon the dependency.

Beside the aforesaid, it is also submitted that deceased was a government employee and he died in harness, as a result whereof, under the **Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006**, as per the affidavit furnished by Rajni, she was also receiving amount of compensation, which ought to be deducted.

To so substantiate his submission, learned counsel for the insurance company relies upon the decision rendered by the Hon'ble Supreme Court, in ***Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others, 2016(4) RCR (Civil) 569*** and also ***National Insurance Company Limited vs. Birender and others, 2020(1) RCR (Civil) 694***.

Even, learned counsel for the appellants (parents of the deceased) has assiduously submitted that in pursuance of death of Jogender in a motor vehicular accident, Rajni, daughter-in-law of the appellants, got re-married, as a result whereof, she is not entitled to any compensation, on

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account of death of her husband. Moreover, it is submitted that appellants have not received any amount under the Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006. In fact, Rajni was receiving certain amount, under the abovesaid Rules and therefore, this amount also has to be taken into consideration, while denying the compensation to Rajni. Also further, it is submitted that the compensation, ought to be granted to Suraj Bhan, father of the deceased, even though, he was an Ex-serviceman and the extent of compensation granted to him, ought to be enhanced.

Further, Rajni, who has also been impleaded as performa respondent No.4 (in FAO-8330-2014) has made appearance through counsel. On her behalf, it is emphatically submitted by learned counsel that Rajni has re-married on 20.11.2013, but however, fact of her re-marriage, as such, does not amount to denial of compensation to her. In this regard, learned counsel has placed reliance upon the decision rendered by the Hon'ble Delhi High Court in *Dincy Devassy vs. United India Insurance Company and others, 2019 ACJ 1428*, which was upheld by the Hon'ble Supreme Court in SLP (C) No.9844-2010, titled as *Bridget Irene and another vs. Dincy Devassy and another*, decided on 06.04.2021. Further, learned counsel for respondent-Rajni has cited decision rendered in *The Iffco Tokio General Insurance Company Ltd. vs. Smt.Bhagyashri Ganesh Gaikwad and others, 2023 ACJ 1813*, wherein also, Hon'ble Bombay High Court had held that after death of her husband, re-marriage cannot be considered as a taboo to get a compensation.

In the light of the same, it is submitted that even though, Rajni has re-

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married, she is entitled to compensation.

So far as, amount received under the Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006, it is submitted by learned counsel for respondent-Rajni, that on the asking of the Court, the affidavit has already been brought on record vide **CM-8051-CII-2023**, wherein, Rajni has categorically deposed about detail of amount, so received by her under the aforesaid Rules, but however, the payment of the same has been stopped on 01.11.2013. It is submitted that requisite amount, as such, though, may be taken into consideration and same may be deducted, but besides the same, she is entitled to 40% of the compensation, as awarded by learned Tribunal.

In view of the submissions so made, it is to be noticed that simply because Rajni, widow of the deceased, got re-married, it could not be a reason to deprive of her rightly claim. Re-marriage of widow has nothing to do with her right, which accrued to her to seek compensation, on account of loss, which has accrued to her, as a result of unnatural demise of her husband. Her decision to re-marry is entirely her personal choice and nobody can have say in the same. In this regard, it is essential to make reference to decision rendered in *Dincy's case (supra)*, wherein, it was concluded that right of the widow to claim compensation crystallized upon her husband's life, being tragically snatched away in the motor accident. Therefore, simply because she has now re-married, her claim does not abate or lessen. Considering the same, the Hon'ble Delhi High Court had removed the disparity between the apportionment of the compensation, so worked upon, granted to the widow as well as the parents of the deceased

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and held that each of the claimant shall be entitled to receive equal share in the awarded amount. The aforesaid decision was further challenged by way of filing of Special Leave Petition titled as '*Bridget Irene and another vs. Dincy Devassy and another*', in the Hon'ble Supreme Court. However, it was observed by Hon'ble Apex Court that in the peculiar facts and circumstances of the case, they were not inclined to interfere in this matter and the Special Leave Petition was dismissed.

In *The Iffco Tokio's case (supra)*, though, much resistance was shown to the compensation to be granted to the widow of the deceased, on account of her re-marriage, but however, said contention was discarded, while observing that after the death of her husband, re-marriage in itself cannot be a taboo to get a compensation. Solely, on account of her being wife of the deceased, is sufficient ground for her entitlement to the compensation.

In *Gianis W/o. Late Anil Abraham vs. Lazar Manjila S/o. Joy Manjila, 2020(3) ILR (Kerala) 457*, while considering the question of entitlement of the widow of the deceased, in pursuance of her re-marriage, it was observed, as herein given:-

“22. It is to be noted that the 1 st appellant would not have thought of a remarriage, but for the untimely death of her husband. It was not a remarriage on account of divorce. The Court has to consider the psychological hurdles that the MACA No.1936/2008 widow will face on account of remarriage. The society is changing. The age old concept of a remarried widow cutting off all relations with the family of her ex-husband, is becoming a story of the past. Fact remains that the 1 st respondent was dependent on the deceased and would have remained so, but for the demise of her husband consequent to the accident. The death has indeed resulted in loss of dependency. After the death of husband, a widow may go for

employment and become self-dependent or may opt for remarriage. Either way, the loss of dependency consequent to the death of the husband does not cease merely because she has remarried or became self-reliant. The word dependency and legal representative, therefore, should receive a pragmatic interpretation. While computing compensation for dependency of a widow on the death of her husband under Section 166 of the Motor Vehicles Act, 1988, her remarriage shall not be a decisive factor.”

Thus, in the light of the aforesaid case law, even though, widow Rajni had re-married, after a period of three years, but still, she is entitled to compensation. Though, the fact of her re-marriage, may as such, taken into consideration for working upon the extent of compensation, but however, the compensation, in toto, as such, cannot be denied.

So far as, Suraj Bhan, father of the deceased is concerned, though, much emphasis has been laid down, on his being not entitled to compensation, on account of himself being an Ex-serviceman, but however, the submission so made, is also bereft of merits.

May be so, on account of Suraj Bhan having two other sons and also 3 acres of land and himself being a pensioner, on account of being Ex-serviceman, he may not be financially dependent upon the deceased, but however, it should be noted that the word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and others may be dependent in terms of service. Thus, dependency is a relevant criteria to claim compensation for loss of dependency. Dependency not necessarily means financial only, it also includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. Considering the same, even though, the

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deceased may not be rendering financial assistance to his father, but however, emotional and psychological dependency upon the deceased, by his father, as such, ought to be there and considering the same, father also ought to be paid the compensation. The emotional dependency of the parents of a young son, who has died, as such, cannot be overlooked and therefore, Suraj Bhan, father of the deceased is also entitled to compensation.

In the light of the aforesaid observations, at the very outset, it is pertinent to mention that relationship, as such, existing between the deceased and claimants, is not disputed. Also, the fact of re-marriage of Rajni having taken place on 20.11.2013 is not disputed. From the evidence adduced, it stands amply established that the deceased was an government employee. PW-4 Ashok Kumar, Clerk, CHC Bawal has been examined, who has proved the salary certificate of Jogender, which is Ex.P4/A.

Learned Tribunal has rightly taken the salary of the deceased as Rs.13,272/-. Also, it stands established that the deceased was 26 years old, at the time of accident.

Considering this age of deceased, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 50%, ought to be made, on the count of 'future prospects' in the case of government job. Thus, addition of Rs.6636/- is to be made further and after making such addition, the earnings of the deceased, comes to be **Rs.13272+6636=Rs.19,908/-** per month.

Considering the number of dependents to be three, when Jogender died, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the deduction of 1/3rd is to be made, on the count of

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‘personal expenses’, which comes to be Rs.6636/- and the residue earnings comes to be $\text{Rs.19908}-6636=\text{Rs.13,272/-}$ and annual earnings comes to be $\text{Rs.13272}\times 12=\text{Rs.1,59,264/-}$.

As per *Sarla Verma’s case (supra)*, considering the age of the deceased, ‘17’ is the suitable multiplier to be applied. Thus, by applying the same, the loss of dependency comes to be $\text{Rs.159264}\times 17=\text{Rs.27,07,488/-}$.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in *Pranay Sethi’s case (supra)*. In *‘Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130’*, the concept of consortium, has been dilated in detail and the dependents were entitled to compensation, on the count of ‘parental’, ‘spousal’ and ‘filial’ consortium, which view, has been further endorsed in *Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327*, wherein, the Hon’ble Supreme Court, while relying upon *Magma’s case (supra)*, had concluded about the children and mother of the deceased, all to be entitled to Rs.40,000/- each towards filial and parental consortium. Also, reference is made to *Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85*, wherein also, the Hon’ble Supreme Court had held the claimants of that case, each to be entitled to compensation, on the count of ‘spousal consortium’ for wife and ‘parental consortium’ for two children.

In consonance with the observations made in *Pranay Sethi’s case (supra)*, as per clause of addition of 10% under the heads of ‘loss of consortium, ‘loss of estate’ and ‘funeral expenses’, after every three years

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from the passing of the judgment, at present, the amount payable, on the count of ‘**loss of consortium**’ comes to be **Rs.48,400/-** to each of the claimant and for the ‘**loss of estate**’ as well as ‘**funeral expenses**’, it is **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to claimants, on account of death of Jogender, is re-appraised, as herein given:-

Loss of dependency	:	Rs.27,07,488/-
Loss of consortium	:	Rs.1,45,200/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.28,88,988/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.28,88,988-18,19,992=Rs.10,68,996/-**. The apportionment of the entitlement as done by learned Tribunal is kept intact. On the enhanced amount of the compensation i.e. **Rs.10,68,996/-**, the appellants-claimants i.e. parents of deceased Jogender and respondent-Rajni, widow of deceased shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

The impugned Award dated 22.01.2014 stands modified, to the extent, as indicated aforesaid. The residue terms of the impugned Award, shall remain the same.

In the light of the aforesaid conclusion, now the question arises, about the deduction to be made, vis-a-vis, the amount received by widow-Rajni, under the Haryana Compassionate to the Dependents of Deceased Government Employees Rules, 2006. In this regard, suffice to make

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reference to *Shashi Sharma's case (supra)*, wherein, the Hon'ble Supreme Court had observed, as herein given:-

“22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependents/claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. 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's case, 1999 ACJ 10 (SC) and Patricia Jean Mahajan's case, 2002 ACJ 1441 (SC).

Furthermore, in *Birender's case (supra)*, it was held by the Hon'ble Supreme Court that amount received under the Financial Assistance

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Rules 2006, ought to be deducted. In the event, the application pending (at that time) is allowed and the amount becomes payable under the Financial Assistance Rules. However, during the pendency of the appeal, an affidavit has come on record filed by Rajni, wherein, she has clearly specified about the extent of financial assistance, so received by her under the aforesaid Rules. However, she had stated in the affidavit that payment has been stopped on 01.11.2013.

In the light of the same, while concluding that the amount, so received by the legal representatives, ought to be deducted, it is also directed herein that the enhanced amount be allowed to be withdrawn by Rajni (widow of deceased Jogender), at the relevant time, upon filing of an affidavit-cum-declaration before the Executing Court, thereby, giving the detail of the amount received by her towards financial assistance under the Rules 2006. Thereafter, learned Executing Court shall be at liberty to verify about the payment made to widow-Rajni or to parents of the deceased (if any) and further, release the residue enhanced amount, after making requisite deductions, from the amounts, so received under the aforesaid Rules. Similar, affidavit or declaration may be obtained by learned Executing Court, even from the parents of the deceased.

As such, appeal filed by the insurance company i.e. FAO-2917-2014 stands dismissed, whereas, appeal filed by the appellants-claimants i.e. FAO-8330-2014, stands partly allowed, in view of the aforesaid terms.

November 17, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No