IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102) **FAO-280-1994(O&M)**
DATE OF DECISION: **06.11.2024**

Palwinder Kaur and others ....Appellants

VERSUS

Nirbhai Singh and another ....Respondents

CORAM HON'BLE MR. JUSTICE PANKAJ JAIN

Present Ms. Rajinder Kaur, Advocate,
for Mr. G.S.Sandhu, Advocate,
for the appellants.

Mr. Sanjiv Pabbi, Advocate,
for respondent no.2.
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PANKAJ JAIN J, (ORAL)

1. Claimants are in appeal seeking enhancement

2. Claim petition was filed seeking compensation on account of death of Sukhwinder Singh, who died of injuries sustained in the motor vehicle accident on October 05, 1989. Learned Motor Accident Claim Tribunal while granting compensation to the claimants, deducted the amount of family pension received by appellant no.1 Palwinder Kaur, which is in the teeth of the law laid down by Supreme Court in the case of **Vimal Kumar and others v. Kishore Dan and others 2013(7) SCC 476.** Family pension is payable under statutory rules. Supreme Court while dealing with effect of compassionate employment on entitlement to compensation payable under M.V Act held as under:-

> *"**20**. The second issue is "whether the salary receivable by the claimant on compassionate appointment comes within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage liable for deduction."*

"Compassionate appointment" can be one of the conditions of service of an employee, if a scheme to that effect is framed by the employer. In case, the employee dies in harness ie. while in service leaving behind the dependents, one of the dependents may request for compassionate appointment to maintain the family of the deceased employee dies in harness. This cannot be stated to be an advantage receivable by the heirs on account of one's death and have no correlation with the amount receivable under a statute occasioned on account of accidental death. Compassionate appointment may have nexus with the death of an employee while in service but it is not necessary that it should have a correlation with the accidental death. An employee dies in harness even in normal course, due to illness and to maintain the family of the deceased one of the dependents may be entitled for compassionate appointment but that cannot be termed as "Pecuniary Advantage" that comes under the periphery of Motor Vehicles Act and any amount received on such appointment is not liable for deduction for determination of compensation under the Motor Vehicles Act. "

3. In view of above, impugned award is modified.

4. Income of the deceased has been proved to be Rs.2,196/- per month. He was 31 years of age. Nothing has been awarded for future prospects. Claimants are entitled for 50% of the monthly income. For calculating dependency factor, deduction of 1/4th has to be applied. Keeping in view the age of the deceased, multiplier of 24 granted by the Tribunal, is set down to 16 in terms of the law laid down by Supreme Court in the case of **Smt. Sarla Verma and others v. Delhi Transport Corporation and another (2009) 6 SCC 121.** Nothing has been awarded for loss of consortium. There are five claimants, each is held entitled for an amount of Rs.44,000/- for loss of consortium. Nothing has been paid, on account of funeral expenses and loss of estate. Rupees.18,000/- each is awarded under the aforesaid two conventional

heads. Interest as awarded by the Tribunal is maintained. Same shall be payable from the date of filing of the claim petition till the date of actual realisation.

5. Mr. Sanjiv Pabbi, Advocate for respondents submits that amount of Rs.1,78,900/- already stands paid. Interest shall be payable on the residual amount i.e the amount payable as per the modified award minus the compensation already awarded.

6. Award modified to the aforesaid extent.

7. Disposed of accordingly.

06.11.2024
mamta

(PANKAJ JAIN)
JUDGE

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