IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

109 **FAO-4025-2011 (O&M)**
Date of Decision : 09.09.2024

SAVITA GOEL & ORS. .... Appellants

VERSUS

JASVIR KAUR & ORS .... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Suri, Advocate for the appellants.

Mr. Vipul Sharma. Advocate for
Mr. Subhash Goyal, Advocate for respondent No.5.

ALKA SARIN, J. (ORAL)

CM-14900-CII-2024

1. This is an application for early hearing of the main appeal.

2. Notice of the application.

3. Mr. Vipul Sharma, Advocate for Mr. Subhash Goyal, Advocate accepts notice on behalf of respondent No.5-Insurance Company and states that he has no objection if the present application is allowed.

4. In view of the above, the present application is allowed. With the consent of both the learned counsel, the main appeal is taken on Board today itself.

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5. The present appeal has been preferred by the claimant-appellants challenging the award dated 10.11.2010 passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as 'the Tribunal') whereby their claim petition was dismissed with costs.

6. Brief facts relevant to the present *lis* are that the deceased in the present case was working as General Manager, Commercial and Marketing with Wahid Sandhar Sugar Limited, G.T. Road, Phagwara and on the fateful day he was travelling in a Santro car bearing registration No.PB-36-C-4466 along with one Rajesh Alag, Accountant of the same sugar mill. While coming back from Sugar Mill, Bhunna, District Fatehabad to Phagwara via Sangrur, when they were to cross the level crossing N.63-C KM No.74/3-4, Sangrur, Bhupinder Singh, the driver of the vehicle, driving the car rashly and negligently and without caring for the traffic rules, tried to cross the railway crossing without observing that a passenger train was coming on the track. The train struck against the car with full force resulting in the death of Joginder Pal Goel. The present claim petition was filed by the legal representatives of deceased Joginder Pal Goel. Defendants No.2 and 3 (respondents No.4 and 5 herein) filed their separate written statements and contested the claim petition.

7. From the pleadings of the parties, the following issues were framed :

1. Whether Joginder Pal Goel, died on 20.10.2007 due to negligent driving of car bearing registration No.PB-36-C-4466 by respondent No.1 on public highway ? OPA
2. Whether respondent No.1 was not holding a valid driving licence at the time of the accident ? OPR-3

3. Whether the Insurance company – respondent No.3 is not liable to pay the compensation as Joginder Pal Goel, deceased was employee of respondent No.2 ? OPR-3
4. Whether the petition is bad for non-joinder of necessary parties ? OPR
5. To what amount of compensation, the applicants are entitled to and from which of the respondents ? OPA
6. Whether respondent No.2 has paid amount of ₹9,00,000 towards compensation apart from other service dues? If so whether that amount is liable to be deducted from the amount of compensation ? OPR-2
7. Relief.

8. The Tribunal decided issues No.1, 3, 5 and 6 together and while deciding issue No.1 in favour of the claimant-appellants it was held that Joginder Pal Goel died in a motor vehicular accident due to the rash and negligent driving of Santro car bearing registration No.PB-36-C-4466 by its driver – Bhupinder Singh. Further, while deciding issues No.3, 5 and 6 against the claimant-appellants, the Tribunal determined their entitlement to the compensation as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income	₹1,02,408
2	Deduction 1/3rd	[₹1,02,408 - ₹34,136] = ₹68,272
3	Multiplier 13	[₹68,272 x 13] = ₹8,87,536
4.	Consortium	₹5,000
5.	Funeral expenses	₹5,000
	Total Compensation	**₹8,97,536**

Ultimately, the Tribunal dismissed the claim petition with costs returning a finding while deciding issue No.6 that since an amount of ₹9,00,000 (rupees nine lakhs) had already been paid by the Sugar Mill where the deceased was employed as compensation on account of his accidental death, therefore, the claimant-appellants are not entitled to compensation under the Motor Vehicles Act, 1988.

9. Learned counsel for the claimant-appellants would contend that the Hon'ble Supreme Court in the case of **Helen C. Rebello vs. Maharashtra State Road Transport Corporation [1998 (4) RCR (Civil) 177]** had held that the compensation under the Motor Vehicles Act was different from the insurance which was given to the family of the deceased on account of life insurance policy and was not deductible from the compensation under the Motor Vehicles Act. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Vimal Kanwar & Ors. vs. Kishore Dan & Ors. [2013 (2) RCR (Civil) 945]** to contend that it has been held that provident fund, pension and insurance receivable by the claimants is not liable to be deducted from the amount awarded by the Tribunal. It is further contended that the income of the deceased has also been wrongly assessed by the Tribunal. As per the Income

Tax Return (Ex.P-3) the salary of the deceased, after deduction of income tax, was ₹1,55,761 per annum which comes to ₹12,980 per month. It is further the contention that a multiplier of '13' would be applicable in the present case as the age of the deceased was 48 years at the time of the accident. Further, a deduction of 1/4th would have to be applied keeping in view the fact that there are five claimants being a widow, three unmarried daughters and the mother of the deceased in the present case. Learned counsel for the claimant-appellants has further relied upon the judgment of the Hon'ble Supreme Court in the case of **The New India Assurance Co. Ltd. vs. Ashish Ravindra Kulkarni & Ors. [2023 ACJ 1997]** to contend that since the deceased was a regular employee, 30% addition should also be made towards future prospectus.

10. *Per contra*, learned counsel appearing on behalf of respondent No.5 has contended that the amount paid by the Sugar Mill was on account of gratuitous payment and was liable to be deducted from the amount awarded by the Tribunal. It is further the contention that the salary has rightly been assessed by the Tribunal. Learned counsel for respondent No.5, however, is not in a position to deny that as per the Income Tax Return (Ex.P-3) the salary of the deceased, after deduction of income tax, comes to ₹1,55,761 per annum which comes to ₹12,980 per month. Learned counsel is also not in a position to dispute the age of the deceased or the fact that all five claimants were dependent on the deceased. Learned counsel, however, contended that in the present case, keeping in view the age of the deceased, 25% addition is to be made and not 30% towards future prospectus.

11. Heard.

12. In the present case the Tribunal while deciding issue No.1 in favour of the claimant-appellants had observed that the said motor vehicular accident had taken place due to the rash and negligent driving of Santro car bearing registration No.PB-36-C-4466 by its driver – Bhupinder Singh. Although while deciding issues No.3, 5 and 6 the Tribunal determined the entitlement of compensation of the claimant-appellants as mentioned above, but the claim petition was dismissed with costs solely on the ground that the claimant-appellants had already received a sum of ₹9,00,000 (rupees nine lakhs) from the Sugar Mill and that amount ought to have been deducted and as such they are not entitled to compensation under the Motor Vehicles Act, 1988. This finding of the Tribunal under issue No.6 is erroneous.

13. The Hon'ble Supreme Court in the case of **Helen C. Rebello** (supra) has held as under :

> *"30. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record herein both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the*

employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family, which such person knows, under the law, has to go to his heirs after his death either by succession or under a will could be said to be the 'pecuniary gain' only on account of one's accidental death. This, of course, is pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicle Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contract to the contrary or any provisions of law."

The Hon'ble Supreme Court in the case of **Vimal Kanwar** (supra) has held as under :

"19. 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 (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr. reported in (1999) 1 SCC 90. 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. The following was the observation and finding of this Court:

> *"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident,*

which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though 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. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount*

> *receivable under the life insurance policy is contractual."*

14. In view of the judgments of the Hon'ble Supreme Court in the cases of **Helen C. Rebello** *(supra)* **Vimal Kanwar** *(supra*), the amount which was given to the claimant-appellants on account of death of Joginder Pal Goel cannot be deducted from the amount which was to be awarded under the Motor Vehicles Act, 1988 as the said payment has no correlation to the amount receivable under the said Act and did not fall under the category of "pecuniary advantage" which is liable for deduction. As per Ex.P-3 i.e. Income Tax Return of the deceased, after the deduction of income tax, the deceased was drawing an annual salary of ₹1,55,761 which comes to ₹12,980 per month. Keeping in view the age of the deceased a multiplier of '13' would be applicable. 1/4th deduction would have to be applied keeping in view the number of claimant-appellants in the present case who were dependent upon the deceased.

15. Further, the Hon'ble Supreme Court in the case of **The New India Assurance Co. Ltd. vs. Ashish Ravindra Kulkarni & Ors.** (supra) has held that in the case of a person who is in regular service, a percentage higher than the one stated in **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]** can also be awarded. It was held as under :

> *"7. It is also his case that the future prospects as reckoned at 30% is not justified and the same should have been at 25% since the job of the deceased cannot be*

considered as permanent employment. Lastly, it is contended the interest as fixed by the High Court at 7.5% per annum is excessive and is without appropriate reason being assigned.

8. The learned counsel for the respondents/claimants would however seek to sustain the judgment passed by the High Court. On all the aspects which have been urged by the learned counsel for the appellant, it is contended that the MACT as well as the High Court have looked into the evidence which was available before it and has thereafter arrived at its conclusion, which does not call for interference.

9. In the light of the contentions put forth, insofar as the salary, we take note that by way of clarification, we had required the learned counsel for the respondents/claimants to point out that the amount paid was after deduction of the tax or proof for payment of tax, since the learned counsel for the appellant had contended that the same has not been done. Along with an application, in addition to the documents that were relied on before the MACT, the notice of assessment of the Inland Revenue Authority of Singapore is produced. From the same, it would indicate that from the salary paid to the deceased, tax has been assessed in Singapore.

Hence, there is no scope for double taxation on the same income. Therefore, deducting any amount towards tax once over again would not arise. Hence, his salary as reckoned by the High Court is justified and the same does not call for interference.

10. On the aspect relating to the future prospects, having noted the salary that was being drawn by the deceased, we have also taken into consideration that the deceased was employed in TATA Precision Industries. Another employee who was working as the Assistant Manager in Human Resources had been examined as PW-2 before the MACT to prove the same. In that regard, taking note of the evidence tendered by PW-2 to indicate the nature of employment of the deceased as also his prospects, we are of the opinion that the future prospects as reckoned in the instant case is also justified. This is for the reason that though the learned counsel for the appellant seeks to point to the portion of the cross-examination of the said witness to indicate that he had earlier been terminated from TATA Holset Private Limited and had thereafter been appointed in TATA Precision Industries, it would not lead to a conclusion that the job was not of permanent nature. In fact, even if the employment letter indicated that the job could be

> *terminated with 30 days notice as insisted by the learned counsel, that cannot be the basis in as much as the said provision for termination notice would be available to both the parties, namely the employer and the employee and that by itself cannot indicate that the employment was of a temporary nature. Right of the employer to terminate does not suggest it is temporary employment. Such right if exercised has to be in terms of law. Further, from the cross-examination, the suggestion put to PW-2, would only indicate that the deceased who was earlier employed in TATA Holset Private Limited was thereafter taken in another sister concern of the same group providing him better prospects. Therefore even if that aspect of the matter is kept in view, the future prospects as reckoned by the High Court is justified."*

16. Keeping in view the law laid down by the Hon'ble Supreme Court in the case of **The New India Assurance Co. Ltd. vs. Ashish Ravindra Kulkarni & Ors.** (supra), 30% addition is made towards future prospectus. The claimant-appellants would also be entitled to compensation under the conventional heads as also under the head loss of consortium. Accordingly, the claimant-appellants would be entitled to ₹18,000/- (₹15,000 + 20% increase) towards loss of estate and ₹18,000/- (₹15,000 + 20% increase) towards funeral expenses and ₹48,000/- each (₹40,000 + 20% increase) towards loss of consortium.

17. In view of the above, the findings returned by the Tribunal under issues No.3, 5 and 6 are erroneous and the same are accordingly set aside/modified and the claim petition of the claimant-appellants stands allowed. The claimant-appellants are entitled to the compensation as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	₹12,980
2	Annual income	[₹12,980 x 12] = ₹1,55,760
3	Deduction 1/4th	[₹1,55,760 - ₹38,940] = ₹1,16,820
4.	Future prospects @ 30%	[₹1,16,820 + 35,046] = ₹1,51,866
5	Multiplier 13	[₹1,51,866 x 13] = ₹19,74,258
6	Loss of estate	[₹15,000 + 20% increase] = ₹18,000
7	Funeral expenses	[₹15,000 + 20% increase] = ₹18,000
8	Loss of Consortium : (i) Parental (ii) Filial (iii) Spousal's	 ₹1,44,000 (48,000 x 3) ₹48,000 (48,000 x 1) ₹48,000/- (Total ₹2,40,000)
9	**Total Compensation**	**₹22,50,258**

18. The amount awarded shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

19. With the above modifications in the impugned award, the present appeal stands disposed off. Pending applications, if any, also stand disposed off.

09.09.2024 **(ALKA SARIN)**
Aman Jain **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No