

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

FAO-6411-2023 (O&M)

Date of decision: 26.02.2024

New India Assurance Co.Ltd.

....Appellant

Versus

Manju Devi and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Vinod Gupta, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. The Insurance Company has filed this appeal to challenge the correctness of the award passed by the Motor Accidents Claims Tribunal (hereinafter referred to as 'the Tribunal').

2. Learned counsel representing the Insurance Company submits that the Tribunal has erred in working out the dependency without taking into consideration the amount of family pension, which was payable to the family, after the death of the employee.

3. This Court has considered the submissions made by the learned counsel representing the appellant.

4. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

5. On 02.01.2019, late Sh. Ram Raj, who was at the relevant time working with the Border Security Force was returning to his village on his motorcycle. At about 4/5 pm, he died due to rash and negligent driving of truck/trolla bearing registration no.NL-01Q-6081 driven in

rash and negligent manner by Khem Chand. Widow and two minor children of the deceased filed the claim petition whereas the widowed mother was impleaded as proforma respondent. The Tribunal on the basis of evidence of PW2 Sukh Darshan an eye witness arrived at a conclusion that the accident took place due to rash and negligent driving on the part of the driver of the truck/trolla, which was insured with the appellant-Insurance Company. Thereafter, the Tribunal assessed the compensation payable to the claimants in the following manner:-

Sr.No.	Head of claim amount	Amounts
1.	Income of deceased Ram Raj	Rs.50,254/- per month
2.	Add. 50% towards future prospects	Rs.25,127/- per month
3.	Deduction (1/4rd towards personal expenses)	Rs.1,92,221/-
4.	Annual dependency after deducting 15% in income tax	Rs.5,76,566/-
5.	Multiplier	16
6.	Loss of dependency	Rs.92,26,656/- (Rs.5,76,666/-x16
7.	After deducting financial assistance	Rs.92,26,656- Rs.20,00,000/-= Rs.72,26,656/-
8.	Loss of estate	Rs.16,500/-
9.	Funeral expenses	Rs.16,500/-
10.	Loss of consortium	Rs.44,000/-
	Total	Rs.73,03,656/-

6. Learned counsel representing the appellant contends that in view of the order dated 25.11.2020 passed in **SLP (Civil) 015311/2020 ‘United India Insurance Co.Ltd.vs. Rafiq and others’** this Court should stay some part of the recovery as the question of adjustment/deduction on account of family pension is pending in the Supreme Court. The order passed by the Supreme Court reads as under:-

“Delay condoned.

Issue notice limited to the question of adjustment/deduction on account of family pension which is payable to the dependents of the deceased.

The petitioner shall deposit the entire amount of compensation in terms of the impugned order within four weeks before the Motor Accident Claims Tribunal, Srinagar. 75% of the amount so deposited be released to the respondents.”

7. This Court has considered the submissions made by the learned counsel representing the appellant.

8. The order passed by the Supreme Court is only while issuing notice in the Special Leave Petition. Such order is not a judgment which is binding under Article 141 of the Constitution of India. Furthermore, as per Order XLI Rule 5 of the Code of Civil Procedure, 1908, filing of an appeal does not operate as a stay unless the court orders. In fact, the issue canvassed before this Court is no more res integra in view of the following detailed judgments passed by the Supreme Court:-

i) **Vimal Kanwar and others vs. Kishorenden and others (2013) 8 SCC 476.**

ii) **Helen C Rebello and others vs. Maharashtra State Road Transport Corporation 1999 (1) SCC 90.**

iii) **Reliance General Insurance Company Ltd. vs. Shashi Sharma and others 2016 (9) SCC 627.**

9. In view of the aforesaid settled position of law, this Court does not find it appropriate to keep the matter pending, particularly when the issue in question has already been examined by the Supreme Court in more than one judgments.

10. Hence, dismissed.
11. All the pending miscellaneous applications, if any, are also
disposed of.

26.02.2024
rekha

(ANIL KSHETARPAL)
JUDGE

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