

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

**FAO No.491 of 2021 (O&M)
Date of Decision: June 30, 2021**

National Insurance Company Limited

.....Appellant

VERSUS

Dharamwati and others

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE G. S. SANDHAWALIA

Present: Mr. Deepak Jindal, Advocate
for the appellant.

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S. SANDHAWALIA, J.(Oral)

Present appeal has been filed by the insurance company under
Section 173 of Motor Vehicles Act, 1988 challenging the award dated
23.03.2021 passed by Motor Accident Claims Tribunal, Palwal. Vide the
impugned award, Dharamwati wife of deceased namely Bhaw Singh has
been awarded a sum of ₹8,82,400/- and her sons have been awarded a sum
of ₹15000/- each, with interest @ 7.5% per annum from the date of filing of
the claim petition till realization.

Learned counsel for the appellant/insurance company has
vehemently submitted that Bhaw Singh, as such, was retired personnel of
Army and was getting pension of ₹28,079/- per month and after his death,
his widow is entitled for family pension and therefore, the dependency,
which has been assessed as ₹14,040/- after deducting 50% from the amount

of pension, the deceased was getting, should be further reduced to ₹7,000/-.

It has also been contended that accident did not take place. The insured vehicle has been falsely involved and the rash and negligent driving of the vehicle has not been proved.

On perusal of the paper book, it is clear that on account of death of the deceased, FIR No.329 (Ex.P3) dated 07.07.2018 was registered under Sections 279 and 304-A IPC at Police Station City Palwal. The deceased was taken to Apex Hospital, Palwal, where he died during the treatment on the same day. The eyewitness of the said accident was his son Ajit, who had appeared in the witness box as PW1. In cross-examination, it was put to him that police had empowered the bus in question in his presence. Respondent No.4 Surender Singh, driver of the bus, which belonged to Haryana Roadways, was never examined by the insurance company to prove the fact that he has been falsely involved or that negligence was, as such, of the deceased, who had started to cross the road without checking whether the bus was in close vicinity. In such circumstances, the absence of the driver putting in appearance to support the insurance company, it cannot be said that the negligence was on the part of the deceased.

The Apex Court in ***Anita Sharma and others Vs. The New India Assurance Co. Ltd. and another 2021 (1) SCC 171***, while deciding the motor accident cases for compensation, the claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt, which applies to the criminal proceedings, is not to be applied. Negligence is not to be proved on the basis of proof, which is beyond reasonable doubt. Therefore, the findings

on issue No.1 cannot be disturbed.

The argument raised that the 50% could be put on the dependency, which has been assessed on account of family pension, the widow of the deceased was getting, is without any basis. The Tribunal has rightly relied on ***Krishna Kinra and others Vs. Dalip Singh and others, 1995 (2) Latest Judicial Reports, 185*** to hold that pension, which is being paid to the widow of the deceased, is not liable to be deducted.

Hon'ble Apex Court in ***Helen C. Rebello (Mrs.) & Ors Vs. Maharashtra State Road Transport Corporation & Anr, 1999 (1) SCC 90:*** and ***United India Insurance Company Vs. Patricia Jean Mahajan & Ors., 2002 (6) SCC 281,*** held that liability of the insurance company cannot be excused or reduced because financial assistance has been received from alternate source on account of death of the deceased. It has been held that 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. Thus, the heirs receive family pension even otherwise than the accidental death. It did not lie in the mouth of insurance company to say that there should be a deduction on account of family pension, which was even otherwise receivable by the widow and therefore, the argument of learned counsel cannot be accepted.

The Tribunal has in circumspect while awarding just compensation in as much as deduction of 50% on account of the dependency from the pension, which was being received at ₹28,079/- in the month of May, 2018, whereas the accident took place in the month of July, 2018. The deceased was ex-serviceman and was aged about 68 years, as

such, the multiplier of was applied to fix the compensation at ₹8,42,400, apart from awarding a sum of ₹40,000/- towards loss of consortium along with awarding a sum of ₹15,000/- each towards loss of estate and funeral expenses by taking monthly dependency at ₹14,040/-.

In these circumstances, this Court is not inclined to interfere in the just and adequate compensation that has been awarded to the widow of the deceased.

Accordingly, the present appeal is dismissed in limine.

(G. S. SANDHAWALIA)

JUDGE

June 30, 2021

Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No