**(2013) 05 AHC CK 0028**

**In the Allahabad High Court**

**Case No :** First Appeal from Order No. 100 of 1989

State of U.P. and Others — APPELLANT

Vs

Smt. Satyawati Devi and Others — RESPONDENT

**Date of Decision :** 08-05-2013

**Acts Referred:**

**Citation :** (2013) 3 UPLBEC 2079

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

# Judgement

Rajes Kumar, J.—Heard learned Standing Counsel. This is an appeal against the order of Tribunal dated 10.10.1988, by which the Tribunal has awarded a sum of Rs. 84,000/- towards compensation.

2. It was the case of the claimant that on 7.1.1986 when Ganga Sahai Sharma, an employee of Irrigation department was going in dumper bearing registration No. USM-9807, the same as being driven by the driver rashly and negligently, the dumper has fallen in nala causing death on the spot. Tribunal having regard to the age of the deceased and income has assessed the compensation at Rs. 84,000/-.

3. Learned Standing Counsel submitted that the accident did not cause on account of negligent driving by the driver of the dumper. The driver was experienced driver and on account of some technical fault, the dumper had fallen in nala. He further submitted that the wife of the deceased has been given compassionate appointment and, therefore, she is not entitled for double benefit in the form of compensation.

4. I do not find substance in the argument of learned Standing Counsel. Tribunal has recorded a categorical finding that on account of rash and negligent driving by the driver of the dumper, the said dumper has fallen in nala, causing death. The argument of learned Standing Counsel that since the wife of the deceased has been given compassionate appointment, she is not entitled for compensation

as it amounts to double benefit, can not be accepted. The compassionate appointment has been given under the Dying-in-Harness Rules. The compassionate appointment or ex-gratia has no co-relation with the amount receivable under the Motor Vehicles Act, 1988 occasioned on account of accidental death and will not be ground for denying the compensation under the Motor Vehicles Act, 1988.

5. In this connection, it is important to note the observations of the Apex Court given in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, . In para-36 the Hon''ble Court has observed that ''family pension is also earned by an employee for the benefit of his family in the form of his contribution in 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 co-relation between the two.'' It is further held that though it is pecuniary advantage receivable by the heirs on account of one''s death but it has no co-relation with the amount receivable under the statute occasioned only on account of accidental death. Such an amount cannot come within periphery of the Motor Vehicles Act to be termed as ''pecuniary advantage'' liable to deduct. Similarly in the case of Smt. Sarla Dixit and another v. Balwant Yadav and others (Civil Appeal No. 5157 of 1992) decided on 29.2.1996 the Apex Court did not approve the deduction on account of family pension in working out compensation. A Division Bench of this Court in the case of Reliance General Insurance Company Ltd. v. Smt. Urmila Devi and others, 2009 (7) ADJ 575 (DB), repelling the argument advanced on behalf of the appellant did not give any benefit to the insurance company about family pension and engagement of the wife of the deceased in employment. Moreover the full Benches of Punjab and Haryana High Court in the case of Bhagat Singh Sohan Singh v. Smt. Om Sharma and others, AIR 1983 P & H 94, the Madhya Pradesh High Court (Indore Bench) in the case of Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another, and Karnataka High Court in the case of Smt. Parwati @ Baby and others v. Hollur Hallappa and others, 1998 (1) TAC 14 (Kant.) have taken similar view. Thus in my opinion the family pension being drawn by the widow of the deceased is not liable to be deducted from the amount of compensation awarded to the claimants.

6. Division Bench of this Court in the case of United India Insurance Co. Ltd. v. Smt. Geeta Devi and others, in First Appeal From Order No. 2147 of 2012 decided on 25.5.2012 has held that the family pension received by the wife of the employee is not liable to be deduced from the compensation and further it has been held that the compassionate appointment has no co-relation with the amount receivable under the Statute occasioned on account of the accidental death and will not be a ground for denying the compensation under the Motor Vehicles Act, 1988. In the result, the appeal has no substance and is, accordingly dismissed.

 