**(2015) 03 AHC CK 0187**

**In the Allahabad High Court**

**Case No :** First Appeal from Order No. 150 of 2015

Uttar Pradesh State Road Transport Corporation Ltd. APPELLANT

Vs

Rajeshwari Devi and Others RESPONDENT

**Date of Decision :** 10-03-2015

**Acts Referred:**

**Citation :** (2015) 6 ALJ 694

**Hon'ble Judges :** Rajiv Sharma and Rakesh Srivastava, JJ.

**Bench :** Division Bench

**Advocate :** Abhishek Anand and Vikas Sharma, for the Respondent

**Final Decision :** Dismissed

# Judgement

1. Sri. Abhishek Anand and Sri. Vikas Sharma have filed caveat on behalf of the respondents-claimants. Today, when the case was called out, Sri. Girish Kumar Yadav, Advocate has put in appearance on behalf of respondents-claimants and argued the matter. Heard learned Counsel for the parties.

The appellant has preferred this appeal against the award dated 3.12.2014 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No. 12, Lucknow whereby the Tribunal has awarded a sum of Rs. 21,03,900/- as compensation in favour of the opposite parties.

2. The factum of the accident is not disputed by the parties.

3. By means of instant appeal, the amount which has been awarded by the Motor Accident Claims Tribunal has been disputed inter alia on the grounds that the opposite parties/claimants are being given family pension and further one of the opposite parties has already been offered appointment on compassionate ground. Therefore, the amount of compensation is highly excessive and the above material facts have totally been discarded by the Tribunal. It has also been contended that the Tribunal has failed to calculate and deduct the amount of income-tax payable on the salary of the deceased. Therefore, the impugned

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order is wholly erroneous and is not based on correct appreciation of material evidence avail-able on record.

4. In contrast, Counsel for the respondents-claimants has submitted that the deceased died due to careless and rash driving of the vehicle run by the appellant. The deceased was a Technician Grade-I in the Railway Department. At the time of death, the total salary of the deceased was Rs. 27,111/- and after deduction, he was getting Rs. 23,800/-. The Tribunal has awarded just and reasonable compensation after considering all aspects of the matter and the documentary evidence placed before the Tribunal. Therefore, the instant appeal is liable to be dismissed.

5. From perusal of the material on record, we are of the opinion that the findings recorded by the Tribunal regarding negligence of the Roadways Bus is based on evidence led by the parties. It may be added that the Tribunal has observed that (PW. 3) Sunil Kumar in his statement has stated before the Tribunal that deceased was going ahead to him near Command Hospital, when the Roadways Bus (Registration No. UP-53/AT 7392) which was being driven carelessly and negligently, hit the Activa (two wheeler).

6. As regard the payment of pensionary benefits to the family of the deceased, we would like to refer the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , wherein the Apex 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.

7. In these circumstances, the first assertion of the appellant that the Tribunal should have deducted the amount payable to the family towards pension is misconceived and is rejected.

8. As regards the second assertion of the appellant that the Tribunal committed an error in not considering the vital fact that one of the dependents of the deceased has been given a compassionate appointment and as such, the loss of dependency could not be such as arrived by the learned Tribunal. In our opinion, the fact that one of the legal heirs of the deceased has been given employment on compassionate ground cannot be a relevant factor in considering the total amount of compensation for the loss suffered by the victim in a proceeding under the Motor Vehicles Act involving two vehicles where the employer has no role to play.

9. In this regard, it would be useful to refer some of the decisions rendered by the Apex Court and other High Courts. In the case of United India Insurance Co. Ltd. Vs. Bindu and Others, , a Division Bench of Kerala High Court, while dealing with the issue of loss of dependency vis-?-vis widow getting employment

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under Compassionate Scheme, held that merely because wife got employment under Compassionate Scheme, the compensation is not liable to be reduced. The Court was prompted to take such a view for the reason that had there been natural death of the husband, still the widow would have been entitled to employment under Compassionate Scheme.

10. In case of National Insurance Company Ltd. Vs. Smt. Manju Bala and Others, , referring to the decisions in cases of Kanika Hazarika and Others Vs. Sreeam Barthakur and Others, , United India Insurance Co. Ltd. v. Bindu & others (supra) and Andhra Pradesh State Road Transport Corporation Vs. G. Jana Bai and Others, , it was held that where a wife gets employment under Compassionate Scheme, the compensation payable is not liable to be reduced.

11. In United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., , the Supreme Court while not deducting the sum received on account of family pension and social security had in its mind that these payments had no co-relation between the compensation payable on account of accidental death and death on account of illness or otherwise. The Supreme Court emphasized that the principle of balancing between losses and gains must have some co-relation with the accidental death by reason of which alone the claimant had received the amounts.

12. Under these circumstances and in view of the various decisions, referred to above, where the legal heirs of the deceased get employment under compassionate scheme, the compensation payable is not liable to be reduced, so, no error can be found with the view taken by the Tribunal.

13. In the instant case, there is no dispute to the fact that the deceased was a Railway Employee and his monthly salary at the relevant time was Rs. 27,111/- which was proved by the documentary evidence. In our view, the compensation awarded to the claimants cannot be said to be excessive and our view is fortified by the recent decision of the Apex Court rendered in Vimal Kanwar and Others Vs. Kishore Dan and Others, . As regard the deduction towards income-tax from the salary, from the perusal of the Award passed by the Tribunal, it is not clear as to whether any deduction has been made towards the income-tax or not. In this context, it would be useful to point out that in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the Apex Court observed that "where the annual income is in taxable range, the word "actual salary" should be read as "actual salary less tax". Therefore, it is clear that if the annual income comes within the taxable range income tax is required to be deducted for determination of the actual salary. Taking into consideration the per month income of the deceased, it can easily be inferred that the deceased was in taxable range. The incident in question occurred five years ago, i.e. 3.12.2010 and if we remit the matter for re-calculation of amount to the Tribunal, it will consume further time causing harassment and delay in disbursement of compensation to the deceased family. Therefore, we are of the view that instead of entering into the arithmetical calculations, the purpose would be served by

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deducting Rs. 25,000/- from the total amount towards income-tax. Subject to aforesaid modification, the Appeal is dismissed. However, it is clarified that while making payment to the claimants, Rs. 25,000/- (Rupees Twenty Five Thousand only) out of Rs. 21,03,900/-, as indicated above, shall be deducted towards income-tax. The amount deposited by the appellant before this Court shall be remitted to the Tribunal. It is further provided that the entire amount of compensation Rs. 20,78,900/- [Rupees Twenty Lacs Seventy Eight Thousand and Nine Hundred only] shall be paid to the claimants within a period of three months with 6% interest. In case, the amount is not paid within the prescribed period, the interest @ 9% shall be payable. The other conditions regarding disbursement of compensation shall be same as prescribed by the Tribunal.

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