



2025:DHC:332



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Pronounced on: 22nd January, 2025***

+ **MAC.APP. 314/2024 & CM APPLs. 36587/2024, 36589/2024**

CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD

Plot No. 39, 2nd Floor, Samyak Tower,
Opposite Metro Pillar No. 120,
Pusa Road, New Delhi-110005

.....Appellant

Through: Ms. Suman Bagga, Advocate.

versus

1. **USHA GUPTA**

W/o Late Shri M.R. Gupta
R/o 66, Paschim Vihar Extension,
New Delhi, West Delhi,
Delhi-110063

.....Respondent No. 1

2. **SUNIL GUPTA**

S/o Late Shri M.R. Gupta
R/o 66, Paschim Vihar Extension,
New Delhi, West Delhi,
Delhi-110063

.....Respondent No. 2

3. **HRITIK (DRIVER)**

S/o Shri Inderjeet Singh,
R/o A-823, J.J. Colony,
Madipur, New Delhi

.....Respondent No. 3

4. **ROSHAN (OWNER)**

S/o Shri Inderjeet Singh,
R/o A-823, J.J. Colony,
Madipur, New Delhi

.....Respondent No. 4

Through: Mr. Pankaj Gupta, Advocate.



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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. *An Appeal under Section 173 Motor Vehicle Act, 1988* has been filed by the *Insurance Company* to challenge the Award dated 24.01.2024, *vide* which the compensation in the sum of Rs. 13,36,140/- along with interest @ 7% per annum has been awarded to the Claimants Respondent No.1&2/wife and son on account of demise of Sh. M.R. Gupta, aged 80 years, in the road accident dated 21.11.2021.
2. The Appellant/ Insurance Company has challenged the Impugned Award on the **ground** that only *Non-Pecuniary Damages* ought to have been granted to the legal heirs of the 80-year-old deceased and no compensation towards *Loss of Dependency* could have been paid as there was no evidence that the 80-year-old deceased was gainfully employed. Further, there was no loss of income, as the only dependent i.e. the wife is already getting family pension to the tune of Rs. 20,000/-p.m.
3. **Submissions heard and record perused.**
4. *Briefly stated*, on 21.11.2021, at about 12:01 P.M, when the Deceased was crossing the road near Madipur Police Chowki, Punjabi Bagh, the offending Vehicle bearing Registration No. DL 8SCW0855 driven at a high speed, in a rash and negligent manner by the Driver/Hritik/Respondent No.3, hit the deceased due to which he sustained grievous injuries. He was shifted to Sri Balaji Action hospital, Paschim Vihar where he died during the treatment.



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5. *FIR No. 990/2021 under Section 279/304A IPC, 1860 at P.S. Punjabi Bagh was registered against the driver/Hritik.*
6. The Detailed Accident Report/Claim Petition was filed on 20.09.2022.
7. *Vide the Impugned Award dated 24.01.2024 compensation in the sum of Rs. 13,36,140/- along with interest @ 7% per annum has been awarded to the Claimants i.e. the Wife and the son of the Deceased.*

Loss of Dependency:

8. While calculating Compensation in such unfortunate cases, it must be borne in mind that while no amount of monetary compensation can replace a person, but the objective of granting compensation is to grant *just and fair compensation* so as to alleviate the financial crisis which may befall the legal heirs of the deceased and to place them in a position to ensure at least financial security. With this in mind, the compensation may be calculated in this case.
9. Admittedly, the deceased, Mr. M.R. Gupta, was a retired Superintendent from Government Boys Sr. Sec. School, Madipur, Delhi and on the date of accident, was getting a pension in the sum of **Rs.41,737/-** per month, as has been reflected in his *Pension Account of the deceased Ex. PW-1/2* and *Particulars of Service of Pensioner Ex. PW-1/3(OSR)*. Furthermore, it is not disputed that even after the demise of Late Sh. M.R. Gupta, his wife/Smt. Usha, is getting the family pension in the sum of Rs.20,000/- per month.



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10. *The question however, for consideration is whether the Family pension being received by the wife, can be considered for calculating Loss of Dependency?*

11. This aspect was considered in the case of Mrs. Helen C. Rebello & Ors. vs. Maharashtra State Road Transport Corpn. & Anr. AIR, 1998 SC 3191 wherein it was observed that while calculating the compensation on account of death, the *pecuniary advantage* accruing under the Act, had to be deciphered by co-relating it with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death ***and not other forms of death***. The pecuniary advantage cannot be interpreted and co-related to any other source/form of death such as natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving motor vehicle because the same would dilute all possible benefits conferred on the Claimant and would be contrary to the spirit of law. If the pecuniary advantage resulting from death was to include all forms of amounts whether by way of inheritance, succession or any other manner, then it could obliterate both, all possible conferment of economic security to the claimant by the deceased and the intention of the legislature. By such an interpretation, the tortfeasor, despite his wrongful act or negligence which contributed to the death of the victim, would have in many cases no or meagre liability and would benefit from the same. Thus, any amount which the Claimants received on account of other forms of death, would not be included while considering the loss of pecuniary benefit in case of accidental amount. Any amount receivable or received not on account of accidental



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death but would have in any case be received by the Claimant, cannot be construed as a “*pecuniary advantage*” liable for deduction.

12. With specific reference to deduction of “*pensionary benefits*”, it was further explained that a person becomes entitled to pension on account of the services rendered in the Department during the tenure of his service. The employee or his heirs are entitled to this amount irrespective of the accidental death. Similarly, *family pension* is also earned by an employee for the benefit of his family in the form of contribution of his services in terms of service conditions, which becomes receivable by the heirs on his demise. ***There is no co-relation between the family pension, which in any case the family would have got and the amount which is paid on account of accidental death.***

13. *Helen C. Rebello* (supra) was referred to by the Apex Court in the Case of *United India Insurance Co. Ltd. etc. vs. & Patrica Jean Mahajan & Ors.*, 2002 (6) SCC 281 wherein it was endorsed that there is no co-relation between the compensation payable on account of accidental death and the amounts receivable irrespective of such accidental death which otherwise in the normal course one would be entitled to receive. It was further highlighted an amount receivable under a statute has no co-relation with an amount earned by an individual.

14. In the case of *Lal Dei & Ors. vs. Himachal Road Transport*, (2007) 8 SCC 319, the Apex Court set-aside the Impugned Order of deduction of the family pension, by observing that the *family pension* is 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 and is receivable even otherwise than the accidental death. There is no



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co-relation between the two and ***therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants.***

15. In Vimal Kanwar & Ors. vs. Kishore Dan & Ors., AIR 2013 SC 3830, the issue arose before the Hon'ble Apex Court that “*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.*” While relying on the judgment of Mrs. Helen C. Rebello (supra) it was concluded 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. It was also held that salary receivable by the claimant on compassionate appointment, may have nexus with the death of an employee while in service but it has no co-relation with the accidental death and hence, not liable to be deducted

16. Similar observations have been made in the Case of Sebastiani Lakra vs. National Insurance Company Ltd., AIR 2018 SC 5034 wherein it was observed that ***deductions cannot be allowed*** from the amount of compensation either on account of insurance, ***or on account of pensionary benefits*** or gratuity or grant of employment to a kin of the deceased, because these amounts are earned by the deceased on account of contractual relations entered into by him with others and do not accrue to the heirs on account of his death in a motor vehicle accident. It was further explained that ***amounts***



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of pension and gratuity are paid on account of the service rendered by the deceased to his employer and are more like the property of the deceased. Since these amounts are also payable on death, irrespective of the form or cause of the death, the same is not liable to be deducted. ***If the deduction towards the family pension is permitted, it would amount to a tort fissure being given the benefit of munificence or gratuity of others.***

17. The Karnataka High Court in its recent Judgment in *Oriental Insurance Co. Ltd. vs. Smt. Rathnamma*, decided on 24.01.2023, has followed all the above-mentioned precedents, to observe that the ***family pension***, receivable by the wife after demise of her husband in an accident, cannot be termed as *pecuniary advantage or gainful income arising out of the death of her husband related to the accident*. The object of family pension is to sustain the wife, after she loses the companionship of her husband and in order to save her from being thrown on the street. Family pension is basically livelihood for maintenance of the life and is not liable to be deducted while assessing the loss of dependency of the Claimants.

18. ***Applying the above settled principles in the present case, the learned Tribunal has rightly not deducted the family pension while calculating the compensation in the sum of Rs. 13,36,140/- along with interest @ 7% per annum.***

Conclusion: -

19. In view of the foregoing, it is held that there is no infirmity in the Impugned Award dated 24.01.2024 and the same does not warrant any interference.



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20. The Statutory Deposit be returned to the Insurance Company in accordance with law.

21. The Appeal is dismissed, along with the pending Application(s) if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

**JANUARY 22, 2025
RS**