

**(2011) 02 P&H CK 0457**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** FAO No"s. 4377, 2863, 2864 of 2009 (O and M)

National Insurance Company Ltd

APPELLANT

Vs

Balwinder Kaur and Others

RESPONDENT

**Date of Decision:** Feb. 15, 2011

**Citation:** (2011) 2 RCR(Civil) 589

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Final Decision:** Allowed

**Judgement**

K. Kannan, J.

1. The appeal in FAO No. 4377 of 2009 is by the Insurance Company urging the issue of quantum awarded to the claimants in the case of death of an Indian national settled in Germany. He was said to be a cook in a restaurant. The Insurance Company sought for permission u/s 170 to contest the case principally on the ground that it had doubts about the involvement of the insured's vehicle and it suspected collusion between the claimant and the insured as regards the aspect of negligence.

2. At the trial, the widow filed a document relating to his salary and sought to contend that he was earning about 2,000 euro and that he used to hand over a sum of Rs. 1,50,000/- per month for household expenses. She would also state that he used to come India once in a year and that he came to India 10/15 days prior to, his death. The Tribunal took the income to be Rs. 4,00,000/- per year and having regard to the fact that he was living in Germany where the cost of living would have been higher. The Tribunal assumed that he would have spent larger amount for himself and that he would have spent only 50% to the family. It took, therefore, Rs. 2 lakhs as the extent of dependency, adopted a multiplier of 16 and awarded a compensation of Rs. 32,00,000/-.

3. The learned Counsel for the Insurance Company contends before this Court that the wife was not dependent at all on her husband and takes me through the evidence of PW1, where answers were elicited in the cross-examination that the wife did not have a bank account nor did she show any remittances from foreign country to her to gather the extent of contribution by the husband to the wife. I would think this attempt of the Insurance Company to be wholly unnecessary and uncalled for. I have already observed that the permission u/s 170 was obtained principally on an issue relating to the accident and the involvement of the vehicle. There was No. doubt expressed that the claimant was trying to fabricate documents with the assistance of owner or the driver. I would allow for certain latitude for an Insurance Company that operates on public funds that a claimant does not walk away with a lottery and that the Tribunal shall award a just compensation on what is brought through evidence. If there was evidence by the wife that her husband was employed in a foreign country and he was earning money in foreign currency and there was also proof that she was the lawfully wedded wife and she had children through him, then the issue of dependence is a matter of inference brought through the provisions of the Hindu Maintenance and Adoption Act and what the wife herself states in her evidence, It will be unfair for an insurer to join issues on quantum at the trial with No. ground or basis for questioning the wife as to how the money came to India. The remittances by a husband to a wife is perhaps one of the methods of realization of the money and showing dependence. If proof of remittance was not tendered at the trial, there could not be a half way house between dependence and want of dependence to say that she could have received money, but not in the manner that she spoke but some lesser amount. If the argument were to be accepted that the money had not been remitted to her, the logical of extension of the arguments must only be that No. money at all had been given to the wife and that she and her children could never have been dependents on the deceased. I would find this to be an irresponsible position for an insurer to advance.

4. The Tribunal while assessing compensation took note of the salary certificate, the proved income and found a justification for making a deduction of = for the personal expenses. I would see it to be a fair approach. Not everyone that goes out of India, goes there only to enjoy the riches and spend all the money to themselves. The behaviour of the Indian diaspora that settles along with members of the family elsewhere ought not to be seen in the same way as how persons in the lower income strata behave in foreign countries. It is a matter of record borne through global experience that workers" remittances are an important and stable source of foreign exchange inflows, just as potent as foreign direct investment. The World Bank estimates 55.06 billions as going towards remittances to India in 2009. World over and particularly, in the developing and under developed countries, the importance of workers" remittances as a source of development is recognized. The maximum remittances to India come not from rich NRIs, but come from poor

labourers employed in middle east, UK and Canada. The reason is the propensity to save for a person in middle income is higher and the contribution to the family for such persons is also higher. I will not, therefore, find any error in logic or reasoning of the Tribunal in taking a deduction of 50% for the personal expenses of the deceased and taking the remaining amount as going to the contribution to the family. So reckoned, the assessment of compensation done by the Tribunal, in my view, is appropriate and I find No. scope for interference. The appeal in FAO No. 4377 of 2009 is dismissed.

5. The accident is of the year 2006 and at the time of disposal of the appeal, about 5 years have elapsed. I have adopted a multiplier of 16 and I would, therefore, provide for withdrawal of the 30% for the wife and direct that the remaining amount shall be deposited as regards her share in a nationalized bank for a period of 10 years, split up into 10 shares, the first deposit for a period of one year, the second deposit for a period of second year and so on upto the period of 10 years. The amount shall be paid to her on the respective dates of maturity. As regards the claim of the daughters, who are minors, the amount shall stand deposited in a nationalized bank during the period of minority and on attaining majority, the respective minor children shall be permitted to withdraw upto 60% and the remaining 40% will stay in deposit for a further period of 5 years split up similarly into 5 shares, the first share for a period of one year, the second for a period of two years and so on upto 5 years. The amount shall likewise be upto on the respective dates of maturity. The first claimant shall be permitted to withdraw upto Rs. 5,000/- for monthly maintenance for each of the children from out of the interest accruals during the period of respective minority of the minor children. As regards the claim of the parents which has been apportioned by the Tribunal, the same shall be permitted to be withdrawn by the parents without subjecting them to any deposit.

6. There is also a case for enhancement of claim at the instance of claimant in FAO No. 2863 of 2009. I have already held that the assessment of the Tribunal is justified and there would be No. occasion for subjecting it to any higher sum. The conventional heads of claim for compensation relating to the loss of love and affection, funeral expenses, loss to estate would not require to be separately calculated, for, we are deciding an issue of a large contribution to the family which must be taken as factoring all the relatively minor heads. The compensation determined by the Tribunal, under the circumstances, is seen to be just and the appeal by the Insurance Company is dismissed. The cross appeal in FAO No. 2863 of 2009 is also dismissed.

7. FAO No. 2864 of 2009 is a claim for enhancement of compensation for death of yet another person, who was involved in the same accident. He was an agriculturist and it was in evidence that he used to contribute Rs. 15,000/- per month towards agriculture and dairy farming. The Tribunal found that Over a period of time from 2003 to 2005, the deceased was able to earn sufficient money to be buying

properties, for instance, on 22.05.2003, he had purchased 16 kanals of land for Rs. 5,50,000/- On 29.05.2003, he had purchased 6 kanals and 3 marks of land for Rs. 1,87,500/- and on 29.06.2005, he had purchased 2 kanals and 16 marlas of land for Rs. 84,000/-. All these purchases were made out of his share of income from the land that he held along with his brothers. The extent of land that bore to his share was about 52 kanals or 6.5 acres. The Tribunal went rather extensively about how even the managerial skills on his agricultural lands must be taken. It observed that his own contribution could never have been less than Rs. 8,000/- per month. I take this to be a fair assessment and will make No. alteration with reference to the assessment of income. The Tribunal, while determining the compensation, provided for a 1/3rd deduction and adopted a multiplier of 16. The learned Counsel for the Appellant would point out that the deceased was maintaining a large family of his widow, 3 minor children. He would, therefore, plead for a provision for a higher contribution to the family. I will reassess the compensation in the manner set out by the Hon"ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and take the contribution to the family at Rs. 72,000/- per year and adopt a multiplier of 16 to hold the loss of dependency at Rs. 11,52,000/-. The Tribunal has awarded Rs. 6,000/- for funeral expenses. I will make a further addition of Rs. 20,000/- towards loss of consortium to the wife and loss of love and affection for the three children. The total compensation would come to Rs. 11,78,000/-.

8. The amount in excess over what has been determined by the Tribunal already shall attract interest at 6% from the date of petition till date of payment.

9. In the manner of distribution of the amount, it shall follow the same formula as set out above namely, 30% of the amount to be paid immediately to the wife and the rest shall stand in deposit and as regards the share of the minor children, they all be held in deposit during the period of minority and on attaining majority, it will be permitted to withdraw upto 60% and remaining 40% will stay in deposit for a further period of 5 years, split up similarly into 5 shares, the first share for a period of one year, the second for a period of two years and so on upto 5 years. The interest accruals on the deposit shall be paid to the mother in so far as the minor children are concerned.

10. The appeal is allowed to the above extent.

Appeal allowed.