

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 1230/2012

1. Smt. Ramdevi W/o Late Laxman Das, R/o 11-12, Tilak Nagar, Bharatpur
2. Om Prakash S/o Shri Laxman Das, R/o 11-12, Tilak Nagar, Bharatpur
3. Ravi Prakash S/o Laxman Das, R/o 11-12, Tilak Nagar, Bharatpur
4. Kusum D/o Laxman Das, R/o 11-12, Tilak Nagar, Bharatpur

----Claimants/Appellants

Versus

1. Rajasthan State Road Transport Corporation, Lohagarh Depot, Bharatpur, Rsrtc, Bharatpur Owner Of The Bus No. Rj-05-Pa-481
2. Saudan Singh S/o Ramhet, R/o Jonai, Police Station Senpa, Distt. Agra Driver Of Roadways, Lohagarh Depot, Bharatpur Driver Of The Bus No. Rj-05-Pa-481

----Non-Claimants/Respondents

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For Appellant(s) : Mr. Jai Prakash Gupta with  
Mr. Aditya Sharma

For Respondent(s) : Mr. Yash Joshi

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**HON'BLE MR. JUSTICE SANDEEP TANEJA**

**Order**

**27/03/2026**

1. The present appeal has been filed by the claimants-appellants (for short 'claimants') under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 17.12.2011 passed by learned Judge, Motor Accident Claims Tribunal (Special Judge, Dacoity Affected Areas), Bharatpur, in M.A.C. Case No.400/2009, whereby the claim petition filed by the claimants was partly allowed.
2. The brief facts giving rise to the present appeal are that the claimants filed a claim petition under Section 166 r/w 140 of Motor Vehicles Act before the learned Motor Accident Claims Tribunal (for short 'Tribunal'), stating therein that Lakshman Das was working as a Conductor with respondent No.1 - Rajasthan State Road Transport Corporation. On 14.05.2009, bus bearing registration No. RJ-05-PA-

0481, being driven by respondent No.2 in a rash and negligent manner, collided with a truck standing on the right side of the road near Village Lulahara. As a result thereof, the passengers as well as Lakshman Das, who was discharging his duties as Conductor, sustained injuries and subsequently, Lakshman Das died.

2.1 The claimants claimed compensation to the tune of Rs.38,90,640/- under various heads.

2.2 On the basis of pleadings of the parties, the learned Tribunal framed two issues and after evaluating the evidence on record, the claim petition was partly allowed and compensation of Rs.7,43,832/- was awarded, in favour of the claimants, along with interest @ 6% per annum payable thereon from the date of filing the claim petition till its actual payment.

3. Being aggrieved by and dissatisfied with the impugned judgment and award dated 17.12.2011, the present appeal has been filed by the claimants seeking enhancement of compensation so awarded.

4. Learned counsel for the claimants has made the following submissions:-

- i. The learned Tribunal, while assessing the loss of dependency, has committed illegality in deducting Rs.6,135/- towards pension, which was being paid by the respondent No.1 to the dependants of the deceased, as the pension is paid to the dependants in terms of the service conditions and has no relation whatsoever with the compensation payable under the Motor Vehicles Act, 1988.
- ii. The learned Tribunal has erred by not making any addition in the income of the deceased towards future prospects.

- iii. A lump-sum amount of Rs.20,000/- has been awarded under the head of love and affection whereas compensation of Rs. 40,000/- should be awarded to all the four claimants i.e., wife, two sons and daughter of the deceased, separately, under the head of loss of consortium.
- iv. The claimants are further entitled to compensation of Rs.15,000/- under the head of loss of estate.
- v. Compensation of Rs.5,000/- has been awarded under the head of funeral expenses, however, the claimants are entitled to compensation of Rs.15,000/- under the said head.

4.1 Learned counsel for the claimants has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Vimal Kanwar & Ors. v. Kishore Dan & Ors.** reported in **(2013) 7 SCC 476**.

5. Per contra, learned counsel for the respondents has opposed the submissions made by learned counsel for the claimants and has submitted that the award is just & reasonable and requires no interference by this Court.

6. Heard learned counsel appearing for the parties and perused material available on record.

7. It is clearly evident from the record of the case that the deceased was working as a Conductor with the respondent No.1 and the salary of the deceased, at the time of accident, was Rs.16,211/- per month, however, while calculating the compensation under the head of loss of dependency, learned Tribunal deducted Rs.6,135/- from the income of the deceased, which was being received by the claimants as pension.

7.1 The issue as to whether pension is required to be deducted from the income of the deceased for the purpose of determination of compensation, is no longer *res integra*.

7.2 The Hon'ble Supreme Court in the case of **Vimal Kanwar** (supra), has held that pension receivable by the heirs of an employee has no correlation with the amount receivable under a statute occasioned only on account of accidental death. For ready reference, the relevant paragraph of the said judgment, is reproduced hereunder:-

"19. The aforesaid issue fell for consideration before this Court in Helen C. Rebello (Mrs) and others vs. Maharashtra State Road Transport Corporation & Anr. reported in (1999) 1 SCC 90. In the said case, this 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. The following was the observation and finding of this Court: (SCC pp.111-12, para 35)

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, 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. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though 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. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

This principle has further been reiterated recently in the case of **Hanumantharaju B. (Dead) by L.R. vs. M. Akram Pasha and Ors.**, reported in **AIR 2025 SC 3283**, wherein the Hon'ble Supreme Court held as under:

"19. It is also now well settled that the amount of compensation is to be calculated on the basis of last drawn salary of the injured/deceased in respect of salaried persons and pension and such retirement benefits enjoyed cannot be deducted for computing the income, these being statutory rights receivable by the employee or his legal heirs irrespective of any unforeseen incident of accidents, fatal injuries etc. and such pensionary benefit is not directly relatable to the motor accident. Hence, pensionary benefit could not have been treated as "pecuniary advantage" liable to be deducted for the purpose of computation of compensation within the scope of Motor Vehicles Act, 1988....."

7.3 In view of the said legal position, while calculating the compensation under the head of loss of dependency, the learned Tribunal was not justified in deducting pension amount of Rs.6,135/-

from the income of the deceased and the calculation of the income of the deceased for the purpose of loss of dependency is required to be assessed as Rs. 16,211/- per month.

7.4 Further, with regard to the rest of the contentions raised by learned counsel for the claimants, having regard to the principles laid down by the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680** and **Magma General Insurance Company Vs. Nanuram @ Chuhru Ram & Ors.** reported in **(2018) 18 SCC 130**, this Court is of the opinion that the compensation as awarded by the learned Tribunal deserves to be enhanced as under:-

- i. As the deceased was 48 years old at the time of accident, therefore, while calculating the loss of dependency, addition @30% will be made in the income of the deceased towards future prospects.
- ii. All the four claimants are entitled to get compensation of Rs.40,000/- separately, under the head of loss of consortium.
- iii. Under the head of loss of estate, the claimants are entitled to get compensation of Rs.15,000/-.
- iv. The compensation towards funeral expenses will be Rs.15,000/-, instead of Rs.5,000/-.

8. It is relevant to note that the learned counsel for the claimants fairly submitted that one of the sons was not dependant on the deceased and therefore, 1/3<sup>rd</sup> of the income has been rightly deducted, by the learned Tribunal, from the income of the deceased on account of his personal expenses.

9. In view of the above discussion, the claimants are entitled to get the compensation as under:-

| S.No. | Particular  | Amount assessed                                   |
|-------|---|---|
| 1.    | Monthly Income  | Rs.16,211/-                                       |
| 2.    | Annual Income   | Rs. 16,211 X 12 =<br>Rs.1,94,532/-                |
| 3.    | According to the age of the deceased i.e. 48 years, multiplier of 13 to be applied                  | Rs. 1,94,532 x 13 =<br>Rs.25,28,916/-             |
| 4.    | As per dependency, 1/3 <sup>rd</sup> income to be deduced for personal expenses of the deceased (-) | Rs.25,28,916 -<br>Rs.8,42,972 =<br>Rs.16,85,944/- |
| 5.    | Add 30% towards future prospects (+)  | Rs.16,85,944 +<br>Rs.5,05,783<br>= Rs.21,91,727/- |
| 6.    | Total loss of dependency  | Rs.21,91,727/-                                    |
| 7.    | Loss of consortium  | Rs.1,60,000/-                                     |
| 8.    | Loss of estate  | Rs.15,000/-                                       |
| 9.    | Loss of funeral expenses  | Rs.15,000/-                                       |
|       | Total Compensation  | Rs.23,81,727/-                                    |
|       | Less amount awarded by the Tribunal (-)   | Rs.7,43,832/-                                     |
|       | <b>Enhanced amount of compensation</b>  | <b>Rs.16,37,895/-</b>                             |

10. Accordingly, the compensation amount awarded by the learned Tribunal is enhanced by Rs.16,37,895/-. Rest of the impugned award shall remain intact. The respondents are directed to deposit the enhanced amount within a period of two months from today.

11. It is directed that the enhanced amount shall carry the rate of interest in terms of the award passed by the learned Tribunal, from the date of filing of the claim petition. The enhanced amount shall be disbursed in terms of the award passed by the learned Tribunal.

12. The present appeal is disposed of in the above terms.

13. All pending applications, if any, also stand disposed of.

14. Registry is directed to send back the record of the case to the concerned Tribunal forthwith.

(SANDEEP TANEJA),J