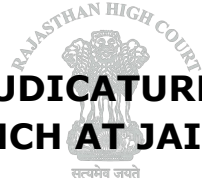




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Civil Miscellaneous Appeal No. 6406/2011

1. Priyanka W/o Raja Ram Meena, aged 33 years.
2. Devesh S/o Raja Ram Meena, aged 14 years
3. Rahul S/o Raja Ram Meena, aged 12 years.
4. Shri Ram Charan Meena S/o Dhudiya, aged 55 years
5. Smt. Rukmani W/o Ram Charan, aged 53 years.

Appellant Nos.4 and 5 resident of Village and Post, Nadoti.

Claimants----Appellants

Versus

1. Swarn Singh S/o Kartar Singh, R/o House No.202, Mohalla Kharkhari, Tehsil Narnaul, Thana Narnaul, District Mahendragarh, Haryana (Driver-Owner)
2. New India Assurance Co. Ltd., having its Regional Office at Nehru Place, Tonk Road, Jaipur through its Regional Manager.

Non Claimants----Respondents

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For Appellant(s) : Mr. Vinay Mathur  
Ms. Vinita Saini  
Mr. Aashish Mittal

For Respondent(s) : Mr. Tripurari Sharma with  
Mr. Bhpendra Singh, for National  
Insurance Co.

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

**Judgment**

**16/04/2026**

1. The present appeal has been filed by the appellants-claimants (hereinafter referred to as 'claimants') under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 24.06.2011 passed by the learned Additional District & Sessions Judge (Fast Track) No.6, Jaipur Metropolitan, Jaipur and the Motor Accident Claims Tribunal Jaipur City, Jaipur in MAC Case No. 343/2008 (hereinafter referred to as 'Tribunal') by which the claim petition filed by the claimants was partly allowed.





2. The brief facts of the case are that on 19.04.2006, Rajaram Meena, along with other persons, was travelling in a taxi bearing registration No.RJ14-T-5955 from Police Station Shipra Path towards Bundi. At about 2:30PM, when the taxi reached near Niwai Bypass, a truck bearing registration No. HR66-1775, being driven by Respondent No. 1, came from the Tonk side at a high speed and in a rash and negligent manner. The driver of the truck lost control over the vehicle, as a result of which it came onto the wrong side of the road and collided with the taxi. Due to the said accident, the occupants of the taxi sustained serious injuries and later on, Rajaram Meena succumbed to death.

3. It was also alleged that at the time of accident, the age of the deceased was 34 years and he was working as Police Constable with Rajasthan Police and was drawing a salary of Rs.8,900/- per month.

4. The learned Tribunal, vide impugned judgment and award, partly allowed the claim petition and awarded total compensation of Rs.15,73,100/- in favour of the claimants, alongwith interest @ 6% per annum.

5. Being dissatisfied with the impugned judgment and award, the present appeal has been preferred by the claimants seeking enhancement of compensation so awarded.

6. Learned counsel for the claimants submits that the deceased was working as Police Constable at Police Station Shipra Path and was drawing a salary of Rs.8,900/- per month which was duly proved by the salary certificate issued from the Office of Police Superintendent, Head Office, Jaipur City, Jaipur, which was





produced by the claimants before the learned Tribunal, marked as Exhibit-6.

6.1 He further submits that the Tribunal while calculating the monthly income of the deceased for the purpose of determining compensation towards loss of dependency erred in taking into consideration only the basic pay, Dearness Pay (DP) and Dearness Allowance (DA) payable to the deceased and deducting the amount of Higher Duties Allowance (HDA), City Compensatory Allowance (CCA), House Rent Allowance (HRA), washing allowance and misc. allowances. He also submits that the above allowances are required to be taken into consideration for the purpose of calculation of loss of dependency.

7. On the other hand, learned counsel for the respondents - Insurance Company opposes the submissions made by the learned counsel for the claimants and submits that the award passed by the learned Tribunal is just and fair and, therefore, no interference is required by this Court.

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

9. The only issue for consideration is whether the learned Tribunal was justified in excluding the amount which was being paid to the deceased towards the Higher Duties Allowance (HDA), City Compensatory Allowance (CCA), House Rent Allowance (HRA), washing allowance and misc. allowance.

9.1 The Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Indra Srivastava & Ors.**,





reported in **AIR (2008) SC 845**, while dealing with concept of income held as under:-

"8. The term 'income' has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family. Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

9. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined.

For the aforementioned purpose, we may notice the elements of pay, paid to the deceased:

Basic	63,400.00
Conveyance Allowance	12,000.00
Rent Co Lease	49,200.00
Bonus (35% of Basic)	21,840.00
Total	1,45,440.00

In addition to above, his other entitlements were:

Con. to PF 10% Basic	Rs.6,240/-(p.a.)
LTA reimbursement	Rs.7,000/-(p.a.)
Medical reimbursement	Rs.6,000/-(p.a.)
Superannuation 15% of Basic	Rs.9,360/-(p.a.)
Gratuity Cont. 5.34% of Basic	Rs. 3,332/- (p.a.)
Medical Policy-self & Family @	Rs.55,000/- (p.a.)
Education Scholarship @ Rs.500	Rs. 12,000/- (p.a.)
Payable to his two children Directly	

10. There are three basic features in the aforementioned statement which require our consideration:





1. Reimbursement of rent would be equivalent to HRA;
2. Bonus is payable as a part of salary; and
3. Contribution to the Provident Fund.

11. We may furthermore notice that apart therefrom, superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family.

12. We have, however, no doubt in mind that medical reimbursement which provides for a slab and which keeping in view the terminology used, would mean reimbursement for medical expenses on production of medical bills and, thus, the same would not come within the purview of the aforementioned category.

13. The question came for consideration before a learned Single Judge of the Madras High Court in **The Manager, National Insurance Co. Ltd. v. Padmavathy and Ors. CMA No. 114 of 2006** decided on 29.1.2007, wherein it was held:

“Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lumpsum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the





employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.”

14. Similar view was expressed by a learned Single Judge of Andhra Pradesh High Court in S. Narayanamma and Ors. v. Secretary to Government of India, Ministry of Telecommunications and Ors. 2002 ACC 582, holding :

“In this background, now we will examine the present deductions made by the tribunal from the salary of the deceased in fixing the monthly contribution of the deceased to his family. The tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the tribunal from the salary such as recovery of housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of his salary. So far as House Rent Allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances, like Travelling Allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance etc., by virtue of his vocation need not be included in the salary while computing the net earnings of the deceased. The finding of the tribunal that the deceased was getting Rs.1,401/- as net income every month is unsustainable as the deductions made towards vehicle loan and other deductions were also taken into consideration while fixing the monthly income of the deceased. The above finding of the tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the judgment in Helen's case (1 supra). The Supreme Court in Concord of India Insurance Co. v. Nirmaladevi and Ors. 1980 ACJ 55 (SC) held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'.”

15. We may, however, notice that a Division Bench of this Court in Asha and Ors. v. United Indian Insurance Co. Ltd. and Anr. [2004 ACC 533], whereupon reliance has been placed by Mr. Satija, was considering a case where, like





the present one, several perks were included in salary. We may reproduce the salary certificate hereto below:

"This is to certify that Shri A.M. Raikar was working as AG 111 in this organisation has been paid the following Pay & Allowances for the month of May, 1995:

Earnings	Amount	Deductions	Amount
Basic	3420.00	CPF (S)	488.00
Special Pay	70.00	CPF (Add)	
FDA	350.00	GIS	3.75
VDA	1040.00	LIC/GIS	509.10
CCA	100.00	HRA	
HRA	1047.00	MSPI	60.00
Washing All.	75.00	Society	576.00
Conv.	225.00	Union	3.00
Cant. Sub.	265.00	HBA	340.00
C.E.A.	2040.00	B. Fund	10.00
Total	8632.00	Total	1989.85

Net payable Rs.6642.00 (Rupees six thousand six hundred forty two only)."

In that case, this Court held :

"Lastly it was submitted that the salary certificate shows that the salary of the deceased was Rs.8,632/-. It was submitted that the High Court was wrong in taking the salary to be Rs.6,642/-. It was submitted that the High Court was wrong in deducting the allowances and amounts paid towards LIC, Society charges and HBA etc. We are unable to accept this submission also. The claimants are entitled to be compensated for the loss suffered by them. The loss suffered by them is the amount which they would have been receiving at the time when the deceased was alive. There can be no doubt that the dependents would only be receiving the net amount less 1/3rd for his personal expenses. The High Court was therefore right in so holding."

This Court in Asha (supra) did not address itself the questions raised before us. It does not appear that any precedent was noticed nor the term 'just compensation' was considered in the light of the changing societal condition as also the perks which are paid to the employee which may or may not attract income tax or any other tax.

What would be 'just compensation' must be determined having regard to the facts and circumstances of each case. The basis for considering the entire pay packet is what the dependents have lost due to death of the deceased. It is in the nature of compensation for future loss towards the family income.





16. In Rathi Menon v. Union of India [2001] 2 SCR 365, this Court, upon considering the dictionary meaning of compensation held :

“In this context a reference to Section 129 of the Act appears useful. The Central Government is empowered by the said provision to make rules by notification "to carry out the purposes of this Chapter". It is evident that one of the purposes of this chapter is that the injured victims in railway accidents and untoward incidents must get compensation. Though the word "compensation" is not defined in the Act or in the Rules it is the giving of an equivalent or substitute of equivalent value. In Black's Law Dictionary, "compensation" is shown as

“equivalent in money for a loss sustained; or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for some loss, injury or service especially when it is given by statute.”

It means when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value. 25. In this context we may look at Section 128(1) also. It says that the right of any person to claim compensation before the Claims Tribunal as indicated in Section 124 or 124-A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an interdict that no person shall be entitled to claim compensation for more than once in respect of the same accident. This means that the party has two alternatives, one is to avail himself of his civil remedy to claim compensation based on common law or any other statutory provision, and the other is to apply before the Claims Tribunal under Section 124 or 124-A of the Act. As he cannot avail himself of both the remedies he has to choose one between the two. The provisions in Chapter XIII of the Act are intended to provide a speedier remedy to the victims of accidents and untoward incidents. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the legislature that the Central Government is saddled with the task of prescribing fair and just compensation in the Rules from time to time. The provisions are not intended to give a gain to the Railway Administration but they are meant to afford just and reasonable compensation to the victims as





a speedier measure. If a person files a suit the amount of compensation will depend upon what the court considers just and reasonable on the date of determination. Hence when he goes before the Claims Tribunal claiming compensation the determination of the amount should be as on the date of such determination."

17. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

18. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Ed.) has been defined as under :

"The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture."

It has also been stated :

"INCOME' signifies 'what comes in' (per Selborne, C., Jones v. Ogle 42 LJ Ch.336. 'It is as large a word as can be used' to denote a person's receipts '(per Jessel, M.R. Re Huggins 51 LJ Ch.938. income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. AIR 1921Mad 427 (SB). Ref. 124 IC 511 : 1930 MWN 29 : 31 MLW 438 AIR1930 Mad 626 : 58 MLJ 337."

19. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.

20. In N. Sivammal and Ors. v. Managing Director, Pandian Roadways Corporation and Ors., (1985) 1 SCC 18, this Court took into consideration the pay packet of the deceased.





21. We may notice that in T.N. State Transport Corporation Ltd. v. S. Rajapriya and Ors., (2005) 6 SCC 236, this Court held:

"8. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.

10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered.

22. Yet again in New India Assurance Co. Ltd. v. Charlie and Anr., (2005) 10 SCC 720, the same view was reiterated. However, therein although the words 'net income' has been used but the same itself would ordinarily mean gross income minus the statutory deductions. We must also notice that the said decision has been followed in New India Assurance Co. Ltd. v. Kalpana (Smt.) and Ors., (2007) 3 SCC 538.

23. The expression 'just' must also be given its logical meaning. Whereas it cannot be a bonanza or a source of profit but in considering as to what would be just and equitable, all facts and circumstances must be taken into consideration.

24. In view of our finding abovementioned, the appeal is to be allowed in part in so far as the High Court had directed deduction of medical reimbursement and tax





elements on the entire sum which according to the statute constitute income. But we decline to do so for two reasons. Firstly, the accident had taken place as far back as on 1st September, 1997 and secondly the Tribunal as also the High Court failed to take into consideration rise in income of the deceased by way of promotion or otherwise.

27. For the aforementioned reasons, we are not inclined to interfere with the impugned judgment. This appeal is, therefore, dismissed. In the facts and circumstances of the case, there shall be no order as to costs."

9.2 Further, the Hon'ble Supreme Court again in the case of **Manorma Sinha and Anr. Vs. Divisional Manager, Oriental Insurance Company Limited and Anr.**, reported in **AIR 2025 SC 5036**, has held as under:

"12. Now, the next question is whether allowances are to be added to the salary for determining the multiplicand. In *National Insurance Co. Ltd. v. Indira Srivastava and Ors.*, (2008) 2 SCC 763, it was held that "the term income has different connotations for different purposes. A court of law, having regard to the change in societal conditions consider the question not only having regard to pay packet the employee carries home at the end of the month but also other perks which are beneficial to the members of the entire family". In *Vijay Kumar Rastogi v. Uttar Pradesh State Roadways Transport Corporation*, 2018 SCC OnLine SC 193, a three-Judge Bench of this Court noticing earlier decisions on the point observed that "the income should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax, although some elements thereof may not be taxable due to exemption conferred thereupon under the statute." Following the decision in *Vijay Kumar Rastogi (supra)* in *National Insurance Company Ltd. v. Nalini and Ors.*, 2024 SCC OnLine SC 2252, it was held by this Court that the emoluments and the benefits accruing to the deceased under various heads for the purposes of computation of loss of income, ought to be included irrespective of whether they are taxable or not. Thus, in our view, the High Court erred in excluding the allowances from the computation to arrive at the multiplicand. Hence, the total monthly income was rightly computed by the Tribunal at Rs. 53,367."

9.3 In view of the law expounded by the Hon'ble Supreme Court, this Court is of the view that the learned Tribunal was not justified





in deducting the amount from the monthly salary of the deceased which was being paid to him towards Higher Duties Allowance (HDA), City Compensatory Allowance (CCA), House Rent Allowance (HRA), washing allowance, other misc. allowances.

Therefore, the above allowances would be part of the income of the deceased, for the purpose of calculating the compensation towards loss of dependency.

10. Accordingly, the monthly income of the deceased is determined as Rs.8,900/-. Since, at the time of accident, the age of the deceased was 34 years, therefore, multiplier of 16 will be applicable.

11. Accordingly, the compensation payable to the claimants is re-computed as under:-

S.No.	Particular	Amount assessed
1.	Monthly Income	Rs.8,900/-
2.	Annual Income	Rs.1,06,800/- (Rs.8900 x 12)
3.	Add 50% towards future prospects (+)	Rs.1,06,800 + Rs.53,400 =Rs.1,60,200/-
4.	According to the age of the deceased i.e. 34 years, multiplier 16 to be applied	Rs.1,60,200/- x 16 =Rs.25,63,200/-
5.	As per dependency, 1/4th income to be deducted for personal expenses of the deceased (-)	Rs.25,63,200 - Rs.6,40,800 =Rs.19,22,400/-
6.	Loss of consortium (five dependants)	Rs.40,000/- x 5 = Rs.2,00,000/-
7.	Loss of estate	Rs.15,000/-
8.	Funeral Expenses	Rs.15,000/-
	Total compensation (S.No.5+6+7+8)	Rs.21,52,400/-
	Less amount awarded by the Tribunal (-)	Rs.15,73,100/-
	<b>Enhanced amount of compensation</b>	<b>Rs. 5,79,300/-</b>





12. Hence, the compensation awarded by the learned Tribunal is enhanced by **Rs.5,79,300/-**. The 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.

13. 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.

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

15. All pending applications, if any, also stands disposed of.

16. Office is directed to send back the record of the case to the concerned Tribunal forthwith.

(SANDEEP TANEJA),J

22 - RAVI KHANDELWAL

