

ITEM NO.31

COURT NO.9

SECTION IV-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4230/2019

(Arising out of impugned final judgment and order dated 05-10-2018 in FAO No. 5560/2004 passed by the High Court Of Punjab & Haryana At Chandigarh)

NATIONAL INSURANCE COMPANY LTD.

PETITIONER

VERSUS

NALINI & ORS.

RESPONDENTS

WITH

SLP(C) No. 6031-6032/2020 (IV-B)

Date : 11-07-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI  
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Dr. Meera Agarwal, AOR  
Mr. Ramesh Chandra Mishra, Adv.

For Respondent(s)

Mr. Sudarshan Rajan, AOR  
Ms. Srishti Sharma, Adv.  
Mr. Mahesh Kumar, Adv.  
Mr. Ramesh Rawat, Adv.  
Mr. Rohit Bhardwaj, Adv.  
Mr. Hitain Bajaj, Adv.  
Mr. Ashutosh Gupta, Adv.  
Mr. Nand Ram, Adv.

Ms. Radhika Gautam, AOR

Mr. Ejaz Maqbool, AOR  
Mr. Saif Zia, Adv.

Mr. Shubham Bhalla, AOR  
Mr. Yajur Bhalla, Adv.  
Ms. Anchita Nayyar, Adv.

**Ms. Gauri Bedi, Adv.**  
**Ms. Ragini Sharma, Adv.**  
**Ms. Akansha Gulati, Adv.**  
**Mr. Alex Noel Dass, Adv.**  
**Mr. Rohit Pandey, Adv.**  
**Mr. Sumeir Ahuja, Adv.**  
**Mr. Vijay Kumar Dwivedi, Adv.**

**UPON hearing the counsel, the Court made the following  
O R D E R**

1. The main plank of the arguments addressed by learned counsel for the petitioner-Insurance Company rests on a plea that the High Court has failed to appreciate the fact that the allowances payable to the deceased were in the nature of personal expenses and the same ought not to have been added to his basic salary to arrive at a dependency factor. Learned counsel submits that allowances under the heads of transport allowance, HRA, PF loan, P.F., SAF, leave encashment cannot be added to the gross income since they are personal in nature.

2. The aforesaid aspect is no longer *res integra* inasmuch as a three Judges Bench of this Court in *Vijay Kumar Rastogi Vs. Uttar Pradesh State Roadways Transport Corporation*<sup>1</sup> has clearly held as follows:

“11. Strikingly, the High Court noted the taxable income disclosed in tax return of the appellant for the relevant period as Rs.77,480/- (rounded off) and tax deduction of Rs.4,496/-, yet proceeded to hold that the net income of the appellant has been rightly taken into consideration by the Tribunal. It is unfathomable that the High Court, despite having accepted the claim of the appellant founded on his tax return for the relevant period, disclosing the taxable income of the appellant as Rs.77,480/- (rounded off) and deduction of tax of Rs.4,496/- could have affirmed the conclusion of the Tribunal that the net annual income of the appellant was Rs. 44,511/-. It ought to have reckoned the taxable income for computing the head towards loss of income. This, in our opinion, is the manifest error committed by the High Court. The appellant is justified in relying upon the decisions of this Court which have

taken the view that loss of taxable earning should be reckoned for the purpose of determining just compensation as enunciated in *National Insurance Co. Ltd. v. Indira Srivastava*<sup>2</sup>, which has been followed in *Oriental Insurance Company Limited v. Jashuben*<sup>3</sup>, and *Kavita v. Deepak*<sup>4</sup>. It has been held 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, or may not be taxable due to the exemption conferred thereupon under the statute."

[emphasis added]

3. It is apparent from the observations made in the aforesaid decision that the emoluments and the benefits accruing to the deceased under various heads for the purposes of computation of loss of income, which are described by learned counsel for the petitioner-Insurance Company as personal to him to arrive at the dependency factor, ought to be included irrespective of whether they are taxable or not.
4. For the aforesaid reasons, we do not see any reason to entertain the present petitions, which are accordingly dismissed.
5. At the request of learned counsel for the petitioner-Insurance Company, eight weeks' time is granted to deposit the awarded amount before the Motor Accident Claims Tribunal for being released in favour of the claimants through RTGS.

**(POOJA SHARMA)**  
**COURT MASTER (SH)**

**(NAND KISHOR)**  
**COURT MASTER (NSH)**

2 (2008) 2 SCC 763

3 (2008) 4 SCC 162

4 (2012) 8 SCC 604