

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29th March, 2016

+

MAC.APP. 624/2012

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. Sameer Nandwani & Mr. A.K.
Soni, Advs.

versus

ASHA & ORS

..... Respondents

Through: Mr. S.P. Kaushik, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ramesh Kumar @ Ramesh, then aged 40 years, employed as Vateriaary & Livestock Development Assistant (VLDA) in the office of sub-divisional officer, Husbandry and Dairy Development Department of the Government of Haryana, drawing salary of ₹ 24,694/- at that point of time, died as a result of injuries suffered in a motor vehicular accident that occurred on 11.12.2009 involving rash driving of tempo bearing No. HR 38 K 7293 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. His widow and minor children preferred an accident claim case (MACT No. 89/2010) on 18.5.2010 before the motor accident claims tribunal (tribunal) under Sections 166 & 140 of Motor Vehicles Act, 1988 (Motor Vehicles

Act) impleading the insurer, driver and registered owner of the vehicle as respondents. The claim case was decided by the tribunal, by judgment dated 31.1.2012, awarding compensation in favour of the claimants in the sum of ₹ 34,69,856/- with interest which includes ₹ 32,98,856/- towards loss of dependency. The insurance cover having been admitted and no case having been set up about breach of terms or conditions of the insurance policy, the insurer was directed to satisfy the award.

2. The insurer has come up in appeal raising only one issue, namely that the claimants being members of the family, dependant upon the deceased employee of the Government of Haryana, were also entitled to financial assistance in terms of rules described as Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006, notified on 1.8.2006. In the submission of the insurer, the financial assistance received by the claimants (first to third respondents) under said rules had to be deducted from the amount ordered to be paid towards loss of dependency.

3. Though the insurer has not come up with copy of the notification dated 01.08.2006 whereby the aforementioned rules were published and brought in force by the Government of Haryana, the relevant extract thereof is available, it having been quoted in judgment dated 21.12.2012 in FAO 1322/2010 (O&M) *Reliance General Insurance Company Ltd. vs. Purnima & Ors.* decided by a division bench of High Court of Punjab and Haryana on 21.12.2012, reported in 2013 (2) Law Herald (P & H) 968 (DB) . The said rules read as under:-

“1. (1) These rules may be called the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006.

(2) They shall come into force at once.

2. The object of the rule is to assist the family of a deceased/missing Government employee of Group C and D category, in tiding over the emergent situation, resulting from the loss of bread-earner while in regular service by giving financial assistance.

3. The eligibility to receive financial assistance under these rules shall be as per the provision in the pension/family pension scheme, 1964.

4. An eligible family member of the deceased/missing Government employee shall make an application i Form A for compassionate financial assistance.

5. (1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim;-

(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty five years;

(b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty five years but had not attained the age of forty-eight years;

(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty five years;

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(3) The family of a deceased Government employee who was in occupation of a Government residence would continue to retain the residence on payment of normal rent/licence fee for a period of one year from the date of death of the employee.

(4) Within fifteen days from the date of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.

(5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance."

4. It is noted that a similar contention had been raised in the case of *Purnima* (supra) before the division bench of Punjab & Haryana High Court, on the basis of aforementioned rules notified by the State Government of Haryana on 1.8.2006, but the same was repelled, *inter alia*, with reference to *Helen C. Rebello vs. Maharashtra State Road Transport Corporation* (1999) 1 SCC 281.

5. Pertinently, the division bench of Punjab & Haryana High Court in *Purnima* (supra) referred to the following observations of the Supreme Court in (para 33 of) *Helen C. Rebello* (supra) which read as under:-

"33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the

claimant even otherwise could not be construed to be the pecuniary advantage, liable for deduction..."

6. This Court agrees with the view taken by the Punjab & Haryana High Court against this backdrop. Following the law laid down in *Helen C. Rebello* (supra), it is held that financial assistance, coming in the hands of the claimants, which cannot be solely traced to the effect of the motor vehicular accidental death cannot be considered for deduction while computing the compensation under the Motor Vehicles Act.

7. For the foregoing reasons, the appeal is found unmerited and, thus, liable to be dismissed.

8. By order dated 30.05.2012, the insurer had been directed to deposit the awarded amount in the names of the claimants in terms of the impugned order of the tribunal with UCO Bank, Delhi High Court Branch within the period specified and upon such deposit being made, 50% was allowed to be released, the balance held in fixed deposit initially for a period of six months to be renewed from time to time.

9. The Registrar General shall now take necessary steps to ensure that the balance lying in deposit is also released to the claimants in terms of the impugned judgment.

10. The statutory deposit, if made, shall be refunded.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 29, 2016/nk