

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1762 of 2014(O&M) &

XOBJC-85-CII of 2015

Date of decision:3.11.2016

Shri Ram General Insurance Co. Ltd.

....Appellant

VERSUS

Santosh Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. A.K. Yadav, Advocate for respondents No.1 to 5.

REKHA MITTAL, J.

This order will dispose of FAO No.1762 of 2014 and cross objections No.85-CII of 2015 as these have emerged out of the same award dated 19.10.2013 passed by the Motor Accident Claims Tribunal, Rewari (in short 'the Tribunal') whereby compensation has been awarded in favour of Smt. Santosh Devi and others in regard to death of Mahipal in a motor vehicular accident that occurred on 22.10.2011 at about 7.30 A.M.

The Tribunal, assessed income of the deceased at Rs.13,976/-, added 30% for future prospects, deducted 1/4th for personal and living expenses, adopted multiplier of 14 to compute loss of dependency at Rs.22,40,280/-. In addition, an amount of Rs.1,00,000/- for loss of consortium to the widow, Rs.25,000/- each for loss of care and guidance to the children and funeral expenses have been awarded making total compensation to Rs.23,90,280/- payable with interest at the rate of 7% per annum from the date of petition till realisation.

The parties shall be referred to as 'the insurance company' and 'the claimants' for the sake of convenience.

Counsel for the insurance company has submitted that as per plea of the claimants, the deceased was working with M/s Speedomax company at a salary of Rs.16,905.57 per month. They examined Parveen Kumar PW-4, Assistant Manager, Speedomax, and he brought on record the salary certificates of August 2011, September 2011 and October 2011 Ex.P3 to P5 respectively. As per salary certificates Ex.P3 and P4, gross salary of the deceased including conveyance allowance, house rent allowance, production allowance, medical allowance, special allowance, washing allowance and attendance allowance was Rs.10,950/-. It is further argued that a long term settlement allegedly arrived at between the workers and the management of Speedomax on 05.01.2012 after death of Mahipal cannot be considered to accept plea of the claimants that salary of the deceased was increased in terms of the said settlement. It is further argued that one of the witnesses examined by the claimants marked on record salary certificate Ex.P2 but the same has not been proved in accordance with law. It is vehemently argued that after ignoring the allowances which were personal in nature to the deceased employee such as conveyance allowance, medical allowance and washing allowance out of gross salary of Rs.10,950/-, loss of dependency is liable to be computed by modifying the award passed by the Tribunal.

Counsel for the claimants, on the contrary, would urge that long term settlement reached between the workers and management of Speedomax on 05.01.2012 was given effect to from 01.10.2011 and on the basis thereof, salary certificate Ex.P2 was issued by the employer. It is

further submitted that keeping in view the facts brought-forth during examination of Brijesh Maliwal, Deputy Manager, (HR Admn.) Speedomax PW-3, Parveen Kumar, Assistant Manager, Speedomax PW-4 and Raman Kumar, Senior Executive HR, Speedomax PW-5, loss of dependency is liable to be computed by considering salary of the deceased at Rs.16,905.57, detailed in salary certificate Ex.P2. It is further argued that compensation awarded under conventional heads needs re-look and enhancement.

I have heard counsel for the parties, perused the paper-book and the records.

It is an undisputed position of the case that Mahipal (since deceased) was working as a Painter in Paint Shop Department of Speedomax (a unit of Omax Autos). As per salary certificates Ex.P3 and P4, gross salary of the deceased was Rs.10,950/- including basic salary Rs.5751/- and various allowances detailed therein. The claimants have relied upon long term settlement Ex.P12 and salary certificate Ex.P2 to stake their claim for considering salary of the deceased at Rs.16,905.57.

Brijesh Maliwal was examined to prove the salary certificate Ex.P2. In his cross examination, he has deposed that bonus is given to the employee once in a year. LTA is given once in a year but paid monthly. The conveyance allowance is paid for not providing any transport facility by the company. There is dress of employee in the company and hence the washing allowance is given to the employee. Parveen Kumar PW-4 besides proving salary certificates Ex.P3 to P5 has deposed about salary certificate Ex.P2. He has stated that as per settlement between the employees and the management, salary of the worker was increased from

October 2011 as recorded in Ex.P2. Service benefits of deceased employee Mahipal were released as per salary mentioned in Ex.P2. Raman Kumar, PW-5, was examined to prove long term settlement dated 05.01.2012 Ex.P12. He has deposed that Mahipal was working as a permanent employee in the company and the revised salary came into effect from 01.10.2011 as per Ex.P12.

Counsel for the insurance company has failed to point out any tangible fact elicited in cross examination of three witnesses working in the management of Speedomax in order to create any doubt regarding correctness of the documents produced by them. Even otherwise, perusal of the long term settlement Ex.P12 particularly clause 34 dealing with 'annual increment' and 39 providing for 'wages increase', it can be safely gathered that the salary certificate Ex.P2 has been prepared on the basis of increase allowed as per long term settlement that was made effective from 01.10.2011. In this view of the matter, salary certificate Ex.P2 is to be taken as the basis for computing loss of dependency.

As per salary certificate Ex.P2, the deceased was entitled to conveyance allowance Rs.1089.60, medical allowance Rs.605.09 and washing allowance Rs.200/-. As these allowances were perks personal to the deceased, the claimants shall not be entitled to benefit thereof. LTA and PF payable to the deceased employee represents payment for a month. After excluding three allowances. loss of dependency comes to Rs.22,40,593/- [Rs.1,44,972/- (Rs.12081/- x 12) + Rs.7261/- LTA + Rs.10460/- PF + Rs.1453 bonus (rounded off) x 14 + Rs.6,89,413/- (30% future prospects) – Rs.7,46,864/- (1/4th deduction for personal expenses).

Under conventional heads, an amount of Rs.1,00,000/- for loss of consortium and Rs.25,000/- for funeral expenses awarded by the Tribunal is affirmed. The minor children of the deceased are awarded an amount of Rs.1,50,000/- in equal share and mother Rs.50,000/- for loss of love and affection. The claimant shall be entitled to an amount of Rs.25,000/- for loss of estate.

In view of the above, total compensation comes to Rs.25,90,593/- and the enhanced compensation is Rs.2,00,313/- (Rs.25,90,593/- - Rs.23,90,280/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization. The enhanced compensation shall be shared by the widow and sons of the deceased in the ratio of 60:20:20. The compensation falling to the share of minor children shall be deposited in a Fixed Deposit Receipt payable on attaining the age of majority or after a period of 3 years, whichever is later. The share of the widow shall be deposited in a Fixed Deposit Receipt for a period of 3 years. The claimants shall not be entitled to raise any loan against the FDRs.

For the foregoing reasons, cross-objections preferred by the claimants are partly allowed. As a natural corollary, the appeal filed by the insurance company fails and is accordingly dismissed. No order as to costs.

NOVEMBER 3, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no