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

XOBJC-135-CII-2015 in/and
FAO-9934-2014 (O&M)
Date of decision: 23.4.2016

Reliance General Insurance Company Limited

...Appellant

Versus

Mrs.Rekha Gautam and others

...Respondents

**CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR**

Present: Mr.Subhash Goyal, Advocate for the appellant

Mr.Ashwani Arora, Advocate
for respondents No.1 to 4-claimants/ cross objectors

Mr.Raveesh Sheokand, Advocate for
Mr.Vivek Rattan, Advocate for respondent No.6

****

**SNEH PRASHAR, J.**

The present appeal has been filed by the Insurance Company challenging the award dated 7.10.2014 passed by learned Motor Accident Claims Tribunal, Chandigarh in MACT case No.1172 of 2013 vide which a sum of Rs.53,11,200/- was allowed to respondents No.1 to 4 as compensation and the appellant- Insurance Company was held liable to indemnify the award.

During pendency of the appeal, claimants-respondents No.1 to 4 filed cross- objections for enhancement of the compensation.

The submissions made by learned counsel for the parties have been heard and record perused.

Learned counsel for the appellant- Insurance Company submits that the monthly income of the deceased was assessed as Rs.22489/- by learned Tribunal and after adding 50% to the income computing future prospects, the income fell within the ambit of taxable income but while calculating the compensation, the income tax payable was not deducted by learned Tribunal. To support his contention, he cited **Shyamwati Sharma and others vs. Karam Singh and others (2010) 12 Supreme Court Cases 378**.

Learned counsel also contended that the father of the deceased was not dependent on him. There being three dependents namely widow, son and mother of the deceased, the deduction of 1/3rd of the income towards personal and living expenses of the deceased should have been made as laid down in **Sarla Verma and others vs. DTC and another 2009 ACJ 1298,** but learned Tribunal deducted 1/4th on that count.

On the other hand, learned counsel representing the claimants submitted that the deceased was employed as a Sepoy in Indian Army and was drawing salary of Rs.22,489/- per month, as is proved by the salary certificate Ex.P6. He had good future prospects of promotion in rank and salary. His father being an old man aged 59 years, was wholly dependent on him and thus, there being four dependents, the deduction of 1/4th towards personal and living expenses taken by learned Tribunal is appropriate. Learned counsel also submitted that no amount was allowed on account of loss of love and affection to the mother of the deceased. In para no.18 of the impugned award a sum of Rs.one lac was allowed to the minor child on account of loss of love, care and guidance but while calculating the total compensation, learned Tribunal added only Rs.25,000/- on that account.

It is undisputed that death of Sanjeev Kumar, husband of claimant/ respondent No.1, father of claimant No.2 and son of claimants No.3 and 4, occurred due to the injuries sustained by him in a motor vehicular accident that took place on 10.4.2013. He was 27 years aged at the time of his death. He was employed as Sepoy in Indian Army and his monthly salary was Rs.22489/-. By addition of 50% of the actual income towards future prospects, the salary of the deceased comes to Rs.33,733.50/- per month and becomes taxable income. Therefore, it becomes necessary to deduct the income tax payable on the salary as laid down in **Shyamwati Sharma and others' case (supra).** The income tax on the total salary for the assessment year of 2014-15 i.e. Rs.4,04,802/- will be Rs.19,000/-.

There is no force in the argument of learned counsel for the appellant that the father of the deceased was not dependent of his income. Smt.Rekha Gautam, widow of the deceased deposed that her father -in-law and mother -in -law were the dependent on the income of their son and are residing with them. During cross-examination, the respondents did not specifically challenge the deposition of Rekha Guatam to the said effect. Also no evidence was led by the respondents to prove that Parmod Kumar Sharma, father of the deceased had any independent source of income and was residing separately. The age of Parmod Kumar Sharma was mentioned as 59 years. There being nothing contrary to the evidence, it is assumed that he was not independently earning and thus he too is taken to be a dependent of the deceased. In that manner, there being four dependents namely widow, minor son and parents, learned Tribunal has rightly deducted $1/4^{th}$ of the income towards personal and living expenses of the deceased. The multiplier of 17 applied by learned Tribunal does not warrant any intervention.

Perusal of the award shows that nothing was allowed to the mother on account of loss of love and affection. A sum of Rs.50,000/- is allowed on that count. In para no.18 of the impugned award, it has been specifically mentioned that a sum of Rs.1,00,000/- is awarded on account of loss of love, care and guidance to claimant No.2 i.e. minor son of the deceased, but while calculating the total compensation, inadvertently, a sum of Rs.25,000/- was added on that count, which needs to be corrected.

Accordingly, the total compensation comes to Rs.51,93,975/- (3,85,802 (annual income) $-1/4^{th}$ (deduction on account personal and living expenses of the deceased) x 17 + 2,75,000 (the amount under the conventional heads).

Vide order dated 10.12.2014, this Court stayed the award amount beyond Rs.50 lacs. Therefore, the balance amount of Rs.1,93,975/- shall be paid to the claimants alongwith interest as awarded by learned Tribunal.

In view of the above, the present appeal as well as the cross-objection petition is disposed of and the impugned award is modified to the above extent.

23.4.2016 **(SNEH PRASHAR)**
gsv **JUDGE**