IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 13.12.2017

FAO No.5919 of 2010 (O&M)

Salochna Devi and others ...Appellants

Versus

Ashwani Kumar and others ...Respondents

FAO No.4983 of 2010 (O&M)

National Insurance Co. Ltd. ...Appellant

Versus

Salochna Devi and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.C. Kapoor, Advocate for the insurance company.

Mr. Diwan S. Adlakha, Advocate for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5919 and 4983 of 2010 as these have emerged out of the same award dated 23.04.2010 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri whereby compensation has been awarded in regard to death of Ram Pal in a motor vehicular accident that took place on 19.12.2007.

The Tribunal has assessed compensation to the tune of Rs.15,19,750/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.15,250/-
2. Deduction for personal expenses	1/4th
3. Multiplier	11
4. Loss of dependency	Rs.15,09,750/- (1,37,250 x 11)
5. Loss of consortium	Rs.5000/-
6. Funeral expenses	Rs.5000/-

FAO No.4983 of 2010 has been filed by the National Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas FAO No.5919 of 2010 has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on issue No.1 regarding involvement of the alleged offending vehicle in the occurrence as well as qua quantum of compensation assessed by the Tribunal. To challenge correctness of findings on issue No.1, it has been argued that in the FIR lodged on 20.12.2007 at the behest of Ram Karan PW4, there is no reference to particulars of the offending vehicle as well as its driver, creating a doubt in version of the claimants that the accident was witnessed by Gurdial Singh and Ram Karan. Another submission made by counsel is that driver of the offending vehicle did not appear in the witness box to counter testimonies of the alleged eye-witnesses, sufficient to record a finding that the offending vehicle was planted owing to collusion between the claimants and owner of the vehicle.

Counsel for the claimants has supported findings of the Tribunal on issue No.1 with the submission that contentions raised by counsel for the insurance company before this Court were the same as were raised before the Tribunal and have rightly been rejected by the Tribunal. It is further submitted that there is no materials on record to discard or disbelieve unrebutted testimonies of Gurdial Singh and Ram Karan whereby they have explained as to how they happened to be eye-witnesses of the occurrence wherein deceased Ram Pal sustained injuries while travelling on his scooter and hit by the car.

In para 12 of the award, there is detailed reference to testimonies of PWs-Gurdial and Ram Karan to record a finding as to how identity of the vehicle was established. Counsel for the insurance company has failed to point out any facts elicited in cross-examination of Gurdial Singh and Ram Karan to challenge their veracity much less to establish that they were not present at the spot at the time of unfortunate occurrence. After due investigation of the FIR, driver of the offending vehicle was put to trial for causing the accident. The insurance company, for the reasons best known, did not examine driver of the offending vehicle to counter case of the claimants particularly testimonies of Gurdial Singh and Ram Karan. There is no dispute about the settled position in law that proceedings before the Tribunal are summary in nature and required to be decided on the basis of balance of probabilities and do not admit of proof beyond shadow of reasonable doubt. Taking into consideration the evidence on record, I find myself unable to accept contentions of the insurance company that findings of the Tribunal on issue No.1 are erroneous and liable to be interfered with.

This brings the Court to assessment of compensation made by the Tribunal. Counsel for the claimants has submitted that the deceased was working as Upper Division Clerk in Uttar Haryana Bijli Vitran Nigam Ltd. Jagdamba Parshad PW5 was examined to prove salary of the deceased. It is argued that in October, 2007 salary of the deceased was Rs.15,247/- but pay scales of officials in Haryana were revised in the year 2009 w.e.f. 01.01.2006. As per the revised scales, salary of the deceased w.e.f. 01.01.2006 was Rs.20,218/- per month. It is argued that the claimants are entitled to compensation qua loss of dependency on the basis of salary @ Rs.20,218/- per month. However, counsel has fairly conceded that the claimants do not press for increase in income qua future prospects in case they are given benefit of pay revision and salary at Rs.20,218/- per month.

Counsel representing the insurance company, on the other hand, has submitted that widow of the deceased shall be entitled to benefit of last pay drawn till the age of superannuation of deceased under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006') and the same is amenable to deduction in view of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4)**

RCR (Civil) 569.

Perusal of testimony of Jagdamba Parshad PW5 makes it evident that the State of Haryana revised pay scales of its employees w.e.f. 01.01.2006. On the basis of revision of pay scales, deceased became entitled to salary of Rs.20,218/- per month w.e.f. 01.01.2006. Counsel for the claimants has recorded a concession that in case the claimants are given benefit of pay revision, they will not press for increase in income qua future prospects. That being so, loss of dependency would be assessed on the basis of salary at Rs.20,218/-. The deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.20,218 x 12 = 2,42,616/- per annum. After deducting tax liability of Rs.22,523/- net income for loss of dependency comes to Rs.2,20,093/- per annum. After applying multiplier of 11 and 1/4th deduction for personal expenses, loss of dependency comes to Rs.18,15,767/- (2,20,093 x 11 - (1/4th for personal expenses)).

Under conventional heads, claimants shall be entitled to following compensation in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**:-

1. Loss of consortium	Rs.40,000/-
2. Expenses on funeral	Rs.15,000/-
3. Loss of estate	Rs.15,000/-
Total	**Rs.70,000/-**

The total compensation comes to Rs.18,15,767 + Rs.70,000 =

Rs.18,85,767/-.

So far as deduction in regard to financial assistance available to family of the deceased under the Rules of 2006, PW5 Jagdamba Parshad in his cross-examination has stated that widow of the deceased is drawing Rs.19,207/- per month and she will get this amount till superannuation of the deceased i.e. for 49 months. The amount @ Rs.19,207/- for 49 months comes to Rs.9,41,143/-. There is no dispute that the deceased was a regular employee of Uttar Haryana Bijli Vitran Nigam Ltd. and his job is pensionable. Perusal of the judgment in **Shashi Sharma's case** (supra) would reveal that Hon'ble the Apex Court has not adverted to the issue that had the Rules of 2006 extending assistance to family of the deceased employee been not in existence, family would have been entitled to pension to the extent of 50% of the last drawn pay. As per the settled position in law, pensionary benefits available to family of the deceased employee are not amenable to deduction for computing loss of dependency. Under the circumstances, in case deduction to the extent of Rs.9,41,143/- is allowed, the Rules of 2006 would operate prejudicially against the claimants causing loss of pensionary benefits to which family of deceased was entitled from the date of death till the age of superannuation, which can neither be spirit of the Rules nor of the judgment of Hon’ble the Supreme Court as the provisions of the Motor Vehicles Act, 1988 providing for compensation to the victim family is a benevolent legislation framed with an avowed social object to achieve. In view of the above, it is expedient in the interest of justice that only 50% amount to be paid to family of the victim would be deducted out of compensation assessed. In this manner, the claimants shall be entitled to amount of Rs.14,15,196/- (Rs.18,85,767 – Rs.4,70,571), thus, compensation is reduced to the extent of Rs.1,04,554/- (15,19,750 – 14,15,196). The insurance company shall be entitled to recover the amount paid in excess by filing an application before the Tribunal.

The appeal preferred by the insurance company is partly allowed. Resultantly, appeal filed by the claimants is dismissed.

13.12.2017 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No