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

FAO No.3439 of 2012(O&M)

Date of decision: 13.11.2017

Kamla and others …..Appellants

VERSUS

Krishna Tupe (KB Tube) and another .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Akash Vashisth, Advocate for the appellants.

Mr. Shivoy Dhir, Central Govt. Counsel for the respondents.

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REKHA MITTAL, J.

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Palwal (in short 'the Tribunal') in regard to death of Paras Ram in a motor vehicular accident that took place on 24.09.2008.

Counsel for the appellants has submitted that the Tribunal assessed loss of dependency to the tune of Rs.23,84,387/- detailed hereunder:-

Annual income of the deceased @ Rs.17636/- p.m.	Rs.2,11,632/-
Deduction for personal expenses	1/3rd
Addition qua future prospects	30%
Multiplier	13

An amount of Rs.31,07,232/- received by family of the deceased under Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (in short 'the Rules') at the rate of Rs.21,578/- per month till the deceased attains the age of superannuation i.e. 58 years is held to be amenable to deduction and thus the claimants being not entitled to get any compensation qua loss of dependency. However, the claimants have been granted an amount of Rs.50,000/- towards loss to estate, love and affection etc and another sum of Rs.10,000/- on account of funeral expenses and loss of consortium making total compensation to Rs.60,000/-, payable with interest at the rate of 9% per annum from the date of petition till realisation.

Counsel for the appellants would urge that the Tribunal has wrongly held that an amount of Rs.31,07,232/- is liable to be deducted out of compensation assessed by the Court. Another submission made by counsel is that the Tribunal has not allowed adequate compensation under conventional heads.

Counsel representing the respondents, on the contrary, would state that as family of the deceased would be entitled to receive compassionate assistance under the Rules more than what is payable as compensation to the claimants, no justification for enhancement of compensation is made out.

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

The deceased was a regular employee of Dakshin Haryana Bijli Vitran Nigam (in short 'DHBVN'). As per pay slip for the month of

September 2008 Ex.P4 his gross pay was Rs.17,636/- per month and the annual salary was Rs.17,636/- x 12 = Rs.2,11,632/-. Tax liability at income of Rs.17,636/- comes to Rs.6163/-, thus, income available for computing loss of dependency is Rs.2,05,469/-.

The deceased was born on 07.03.1960 as recorded in document Ex.P7 and he was approximately 48 years of age at the time of his unfortunate demise. In view of the latest judgment of Hon'ble the Supreme Court in **SLP (Civil) No.25590 of 2014 titled National Insurance Company Ltd. Vs. Pranay Sethi and others, decided on 31.10.2017**, addition for future prospects @ 30% comes to Rs.61,641/-. The Tribunal has rightly applied multiplier of 13 and deduction for personal expenses to the extent of 1/3rd. In this manner, loss of dependency comes to Rs.23,14,951/- [Rs.26,71,097/- (Rs.2,05,469 x 13) + Rs.8,01,329/- (30% future prospects) – Rs.11,57,475/- (1/3rd deduction towards personal expenses)

There is no dispute that as the deceased was a regular employee of State of Haryana, family is entitled to financial assistance under the Rules. Sh. Desh Raj ALM/Record Keeper from the office of Executive Engineer of DHBVN Palwal was examined. He produced on record documents Ex.P5 to P7. In his cross examination, he has deposed that at the time of death of Paras Ram, he was receiving Rs.17,636/- per month and now his widow is receiving financial assistance of Rs.21,578/- per month. Further stated that widow would be entitled to financial assistance till the age of retirement of Paras Ram up to the age of 55 years. Document Ex.P5 is the sanction with regard to financial assistance by

DGM (O.P. Division), Palwal vide order No.42 dated 17.03.2009. On calculating the amount of financial assistance reflected in Ex.P5, the family of the deceased was entitled to an amount of Rs.15,50,343/- till the age of 55 years of Paras Ram i.e. up to March 2015. Counsel for the appellants, in response to a query by the Court has informed that job of the deceased was pensionable. Perusal of the judgment **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569**, would reveal that Hon'ble the Apex Court has not adverted to the issue that had the Rules extending assistance to family of a 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, the pensionary benefits available to family of a deceased employee are not amenable for deduction for computing loss of dependency. Under the circumstances, in case deduction to the extent of Rs.15,50,343/- 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 providing for compensation to the victim family is a benevolent legislation framed with an avowed social object to achieve. In the given scenario, only 50% of the amount available to family of the deceased under the Rules of 2006 is amenable to deduction.

The claimants shall be entitled to following compensation under conventional heads in the light of judgment in **Pranay Sethi's case** (supra):-

Loss of consortium	Rs.40,000/-
Funeral expenses/last rites	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation payable to the claimants, after deducting Rs.7,75,171/- comes to Rs.16,09,780/- and the enhanced compensation is Rs.15,49,780/-(Rs.16,09,780/- - Rs.60,000/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable in terms of award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

NOVEMBER 13, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no