IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3064-2013 (O&M)
Date of decision: 30.11.2017

Kamla Devi and others ...Appellants

Versus

Sahib Singh and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vishal Yadav, Advocate for
Mr. Vikrant Hooda, Advocate for the appellants.

Ms. Rohini Bedi, Advocate for
Mr. Vishal Goel, Advocate for respondent No.3.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Sanjay Kumar in a motor vehicular accident that took place on 20.01.2011.

The Tribunal has assessed compensation qua loss of dependency and under conventional heads to the tune of Rs.23,14,400/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.13,883/-
2. Addition for future prospects	30%
3. Deduction for personal expenses	1/4th
4. Multiplier	14
5. Loss of dependency	Rs.22,74,300/- (Rs.1,62,450 x 14)
6. Funeral expenses	Rs.20,000/-

7. Loss of consortium Rs.20,000/-

As the deceased was a regular employee of Haryana Roadways and family of the deceased is entitled to financial assistance under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006'), an amount of Rs.19,85,472/- has been deducted from the compensation assessed by the Tribunal, in the light of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569.** Compensation of Rs.3,28,928/- payable with interest @ 7.5% per annum from the date of petition till realization has been awarded.

Counsel for the appellants has submitted that the Tribunal has wrongly deducted total amount of Rs.19,85,472/- available to family of the deceased under the Rules of 2006. Adequate compensation may be allowed under conventional heads in the light of latest judgment of Hon'ble the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017.**

Counsel representing the insurance company, on the other hand, has supported findings of the Tribunal with regard to deduction of the entire amount available to family of the deceased under the Rules of 2006.

I have heard counsel for the parties, perused the paper book particularly award dated 05.05.2012 passed by the Motor Accidents Claims

Tribunal, Jhajjar (in short 'the Tribunal').

There is no dispute with regard to computation of loss of dependency to the tune of Rs.22,74,300/-. The claimants shall be entitled to an amount of Rs.70,000/- under conventional heads in the light of judgment in Paranay Sethi's case (supra), detailed hereunder:-

1. Loss of consortium to the widow	Rs.40,000/-
2. Expenses on funeral	Rs.15,000/-
3. Loss of estate	Rs.15,000/-

The total compensation comes to Rs.22,74,300 + Rs.70,000 = Rs.23,44,300/-.

The question that calls for determination is, whether the entire amount payable to family of the deceased under the Rules of 2006 is amenable to deduction for computing compensation payable to the claimants. There is no dispute that the deceased was a regular employee of Haryana Roadways 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.19,85,472/- 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 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 compensation of Rs.13,51,564/- (Rs.23,44,300 – Rs.9,92,736) and the additional amount is Rs.10,22,636/- (13,51,564 – 3,28,928) payable with interest @ 7.5% per annum from the date of petition till realization, to the widow and children of the deceased in equal ratio. The share of minors shall be deposited in FDRs payable on their attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

30.11.2017
ashok

(REKHA MITTAL)
JUDGE

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