IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2648 of 2016(O&M)

Date of decision: 31.7.2017

New India Assurance Co. Ltd. …..Appellant

VERSUS

Ajmero and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Gupta, Advocate for the appellant.

Mr. Sumeet Sheokand, Advocate for respondent No.2.

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REKHA MITTAL, J.

The present appeal preferred by the insurance company directs challenge against award dated 09.12.2015 passed by the Motor Accidents Claims Tribunal, Karnal (in short 'the Tribunal') whereby compensation has been awarded in respect of death of Jai Pal in a motor vehicular accident that took place on 14.11.2014.

Jai Pal (since deceased) was a regular employee of Irrigation Department of State of Haryana and was posted at Karnal. The Tribunal assessed his income at Rs.40,724/- and after taking into consideration liability to pay income tax, his income was taken as Rs.38,735/- for the purpose of loss of dependency. For increase in income towards future prospects 30% was added, 1/4th was deducted for personal expenses and after adopting a multiplier of 14, loss of dependency was computed to the tune of Rs.63,44,688/-.

Under conventional heads, an amount of Rs.1 lakh for loss of consortium to the widow, Rs.7 lakh for loss of love and affection for widow and three sons of the deceased, Rs.1 lakh for loss of estate and Rs.25,000/- for funeral expenses was awarded making total compensation to Rs.72,69,688/- to be paid to the claimants with interest at the rate of 12% per annum, to be apportioned in the manner detailed in para 30 of the award.

Counsel for the appellant has assailed the award on several counts. The first submission made by counsel is that the Tribunal has considered age of the deceased as 45 years for allowing benefit of increase in income towards future prospects and adopting a multiplier of 14. It is argued that the deceased furnished an affidavit to his employer stating therein that he was born on 15.06.1960. On the basis of affidavit furnished by the deceased, an entry in his service record with regard to his date of birth was made. According to counsel, as per service record of the deceased, he was more than 54 years old at the time of death in November 2014, therefore, the claimants are neither entitled to benefit of future prospects in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** nor they can claim multiplicand to be multiplied by 14. It is further submitted that in view of age of the deceased, appropriate multiplier would be 11.

The second submission made by counsel is that as family of the deceased shall be entitled to last drawn pay of the deceased till his age of 58 years, the amount to be received by family of the deceased under

Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (in short 'the Rules') is liable to be deducted from the assessed compensation. For this purpose, he has referred to judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569**. Counsel would inform that salary of the deceased at the rate of Rs.40,720/- for a period of 42 months till he would have attained the age of 58 years comes to Rs.17,10,000/-.

Another submission made by counsel is that the Tribunal has awarded an amount of Rs.1 lakh for loss of consortium to the widow and another Rs.1 lakh for loss of estate. All the three sons of deceased were major at the time of his death. Compensation awarded for loss of love and affection to the widow and three sons of the deceased to the tune of Rs.7 lakh is exorbitant and liable to be reduced. It is further argued that compensation can neither be a bonanza nor a source of profit or largesse.

Counsel representing the claimants/respondents would submit that the insurance company did not adduce any evidence to prove that as per service record of deceased Jai Pal, his date of birth is 15.06.1960. However, when the Court expressed its inclination to seek a report in this regard from employer of the deceased, counsel has fairly conceded that let the compensation be assessed by taking date of birth of the deceased as 15.06.1960. That being so, deceased was more than 54 years old, therefore, claimants shall not be entitled to benefit of future prospects in the light of judgment **Sarla Verma's case** (supra). Similarly, admissible multiplier would be 11 in place of 14. In this manner, loss of dependency comes to Rs.38,34,765/- [(Rs.38,735 x 12 x 11) – Rs.12,78,255/- (1/4th towards personal expenses)

Counsel for the claimants has not disputed that family of the deceased will receive compassionate assistance till the deceased attains the age of 58 years. Hon'ble the Supreme Court of India in the judgment cited by counsel for the appellant has held that any benefit derived by family of a deceased employee of Haryana Government under the Rules shall be deducted from the compensation assessed under the Motor Vehicles Act, 1988. Counsel for the claimants has not disputed that family of the deceased would be paid last drawn pay i.e. Rs.40,724/- per month for a period of 42 months till the deceased attains 58 years of age as per service record and the amount comes to Rs.17,10,000/-. However, perusal of the judgment would reveal that the Court has not adverted to the issue that had the Rules of 2006 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. There is nothing on record suggestive of the fact that in addition to compassionate assistance under the Rules, family of the deceased is being paid pension till the age of superannuation. Rather Rule 5(2) of the 2006 Rules specifically denies family pension as per normal rules. Under the circumstances, in case deduction to the extent of Rs.17,10,000/- 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% salary to be paid to family of the victim would be deducted out of compensation assessed.

Compensation awarded by the Tribunal for loss of consortium to the widow, loss of estate and funeral expenses is affirmed. The Tribunal has awarded an amount of Rs.7 lakh for loss of love and affection to the widow and three sons of the deceased.

Once the widow has been paid for loss of consortium, there is no justification for paying separate compensation for loss of love and affection to the widow. The three sons of the deceased were more than 20 years old. Counsel for the claimants has failed to cite any judgment of Hon'ble the Supreme Court wherein loss of love and affection to three major sons of a deceased to the tune of Rs.6 to 7 lakh has been awarded. If compensation awarded by the Tribunal with regard to loss of love and affection is affirmed, it would be a bonanza for family of the deceased. In the light of age of three sons of the deceased, allowing an amount of Rs.1.5 lakh (to be shared equally) for loss of love and affection, care and guidance of their father is reasonable.

In view of the above, compensation payable to the claimants comes to Rs.33,54,765/- and compensation awarded by the Tribunal is reduced to the extent of Rs.39,14,923/- (Rs.72,69,688/- - Rs.33,54,765/-).

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. The insurance company shall be entitled to recover the amount of Rs.39,14,923/- or any part thereof, if already paid to the claimants.

JULY 31, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no