IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 07.09.2017

1. **FAO No.2931 of 2016(O&M)**

United India Insurance Co. Ltd. …..Appellant

VERSUS

Saroj and others .....Respondents

Present: Mr. Ram Avtar, Advocate for the appellant.

Mr. H.S. Ahluwalia, Advocate for respondents No.1 to 3.

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2. **FAO No.6798 of 2016(O&M)**

Saroj and others …..Appellants

VERSUS

Rakesh and others .....Respondents

Present: Mr. H.S. Ahluwalia, Advocate for the appellants.

Mr. Ram Avtar, Advocate for respondent No.3.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order shall dispose of FAO Nos.2931 and 6798 of 2016 as these have emerged out of the same award dated 01.02.2016 passed by the Motor Accidents Claims Tribunal, Sonepat (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Ved Parkash in a motor vehicular accident that took place on the intervening night of 05/06.07.2013 due to rash and negligent driving of vehicle Mahendra Quanto bearing No.HR10-K-0090, driven by Rakesh.

The Tribunal has assessed income of the deceased at Rs.25,663/- per month, added 15% towards future prospects, deducted 1/3rd towards personal expenses and adopted a multiplier of 11 to compute loss of dependency to the tune of Rs.25,97,100/-. In addition, an amount of Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.25,000/- towards pain, loss and sufferings and an amount of Rs.3,000/- towards transportation has been awarded making total compensation to Rs.27,50,100/-.

The parties shall be referred to as the 'Insurance Company' and the claimants for facility of reference.

FAO No.2931 of 2016

Counsel for the insurance company has assailed quantum of compensation primarily on three grounds. The first submission made by counsel is that as family of the deceased shall be entitled to last drawn pay of Rs.33,823/- per month till age of superannuation of the deceased i.e. 58 years, the amount payable to 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 and others, 2016(4) RCR (Civil) 569**.

The second submission made by counsel for the Company is that had the deceased remained alive, he would have retired in November 2018 after a period of 5 years and 4 months but the Tribunal has allowed multiplier of 11 to compute loss of dependency. It is further argued that compensation is liable to be assessed by applying split multiplier. Another submission made by counsel for the Company is that the Tribunal has wrongly allowed benefit of increase in income for future prospects to the extent of 15%. To bring home his contention, it is argued that as the deceased was a regular employee of the State of Haryana and was more than 50 years of age at the time of death, no such increase is permissible 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**.

Counsel representing the claimants, on the contrary, would urge that the Tribunal has committed a grave error by assessing loss of dependency on the basis of net salary of the deceased but the deductions made from salary cannot be excluded for computing compensation. Another submission made by counsel is that compensation awarded under conventional heads needs enhancement.

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

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 **Shashi Sharma's case** (supra) 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.33,823/- for a period of 5 years and 4 months till the deceased attains 58 years of age as per service record and the amount comes to Rs.21,64,672/-. However, perusal of the judgment would reveal that the Apex 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.21,64,672/- 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.

Hon'ble the Supreme Court in **Puttamma and others vs K.L. Narayana Reddy and another, 2014(1) R.C.R. (Civil) 443,** set aside the judgment of the High Court adopting a split multiplier method and further held that in absence of specific reasons and evidence on record, the Tribunal or the Court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in the case of **Smt. Sarla Verma's case (supra), Sarladevi and others vs Divisional Manager.** In **M/s Royal Sundaram Alliance Insurance Company Limited and another, 2014 ACJ (SC) 2391**, Hon'ble the Supreme Court set aside the split multiplier adopted by the High Court. In the said case, deceased was 58 years at the time of accident and the Tribunal had applied multiplier of 8 but the High Court allowed loss of dependency at Rs.10,98000 for the first two years and for the balance 7 years, only 50% annual income was taken into consideration to compute loss of dependency at Rs.19,21,500/-. In **K.R. Madhusudhan and others vs Administrative Officer and another, 2011(2) RCR (Civil) 207 (SC)**, the High Court reduced the compensation granted by the Tribunal. The split multiplier adopted by the High Court was set aside with the observations that the High Court introduced the concept of split multiplier and debarred from the multiplier used by the Tribunal without disclosing any reason. A Co-ordinate Bench of this Court in **The Oriental Insurance Company vs Smt. Premwati and another, FAO No.6396 of 2012 decided on 27.02.2016** did not accept the judgment of another Co-ordinate Bench **Balbir Kaur vs Manjinder Singh and others, FAO No.5250 of 2013 decided on 11.12.2014** wherein split multiplier was allowed. The judgment in **Smt. Premwati and another's case** (supra) was challenged by way of petition for special leave to appeal before Hon'ble the Supreme Court but the special leave petition was dismissed on 26.08.2016 and findings of this Court negating plea of the insurance company to apply split multiplier have been affirmed. In the face of various judgments by Hon’ble the Supreme Court and counsel for the insurance company having failed to cite any judgment holding otherwise, it is difficult to accept contention of the insurance company that the Tribunal has erred while adopting multiplier of 11 admissible for age bracket of 51 to 55 years in **Smt. Sarla Verma’s case** (supra).

The appeal filed by the Company is partly allowed in the aforesaid terms.

FAO No.6798 of 2016

The Tribunal has assessed income of the deceased at Rs.25,663/- on the basis of net pay of June, 2013 reflected in salary slip Ex.P11 excluding an amount of Rs.8,000/- deducted towards GPF, Rs.30/- for Group Insurance Scheme and Rs.130/- on account of other miscellaneous heads. Counsel for the insurance company is not in a position to justify deduction of Rs.8160/- out of gross salary of Rs.33,823/- for June, 2013. Since the deducted amount would have been available for payment to the deceased, the same cannot be excluded for the purpose of computing loss of dependency. Under the circumstances, income of the deceased is taken at Rs.33,823/- per month i.e. Rs.4,05,876/- per annum for assessing loss of dependency. The Tribunal has rightly allowed deduction of 1/3rd for personal expenses of the deceased.

As the deceased was 53 years old at the time of accident, the claimants shall not be entitled to benefit of increase in income for future prospects in view of enunciation laid down by Hon'ble the Supreme Court in **Smt. Sarla Verma's case (supra).**

The deceased died in July 2013. Taking into consideration the income exempted from tax in the concerned financial year (Rs.2,00,000/-) , taxable income would be Rs.2,05,876/- and at the rate of 10% tax liability comes to Rs.20,587/- . After deducting tax and 1/3rd for personal expenses, income available for loss of dependency comes to Rs.2,56,859/- (rounded off to Rs.2,56,860/-). After applying multiplier of 11, loss of dependency comes to Rs.28,25,460/- [Rs.2,56,860/- x 11].

Compensation awarded by the Tribunal for loss of consortium to the widow, funeral expenses and for transportation is affirmed. The Tribunal has awarded Rs.25,000/- towards pain, loss and sufferings and the same is appropriated towards loss of estate. An amount of Rs.1,00,000/- is awarded for loss of love and affection to the children, to be shared equally. Total compensation is Rs.30,78,460/-.

In view of the above, compensation payable to the claimants comes to Rs.19,96,124/- [Rs.30,78,460/- - Rs.10,82,336/- (50% deduction towards compassionate assistance). Resultantly, compensation awarded by the Tribunal is reduced to the extent of Rs.7,53,976/- (Rs.27,50,100/- - Rs.19,96,124/-). In case the insurance company has already paid compensation to the claimants, it shall recover the excess amount from the claimants by filing an application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

SEPTEMBER 7, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no