IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5586 of 2014 (O&M)
Date of decision: 08.11.2017

Seema Devi and others ...Appellants

Versus

Sweety and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Ekta Thakur, Advocate for the appellants.

Ms. Vandana Malhotra, Advocate for respondent No.2.

Ms. Kiranjeet Kaur, Advocate for
Mr. Rajender S. Malik, Advocate for respondent No.3.

Mr. Pradeep Kumar, Advocate for respondent No.4.

****

REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Subhash Chander in a motor vehicular accident that took place on 25.04.2011.

The Tribunal has assessed compensation to the tune of Rs.12,73,585/- to be shared to the extent of 50% each by the two vehicles held to be negligent (composite negligence) for causing the accident.

Counsel for the appellants has submitted that the Tribunal has assessed compensation by relying upon judgment of this Court **Oriental Insurance Co. Ltd. Vs. Saroj Devi and others, PLR Vol. CLXV-(2012-1)** that is no more a good law in view of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569.** It is further submitted that compensation may be assessed in terms of judgment of Hon'ble the Apex Court in Shashi Sharma's case (supra).

Counsel has submitted that at the time of occurrence, the deceased was slightly more than 50 years of age, therefore, admissible multiplier in the circumstances would be 13. The application for compensation was filed by the widow, one son, a daughter and parents of deceased Subhash Chander, therefore, deduction for personal expenses should be 1/4th. The claimants are entitled to increase in income for future prospects in the light of latest judgment of the Constitution Bench of Hon'ble the Supreme Court **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 companies, on the other hand, would urge that financial assistance available to family of the deceased under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (hereinafter to be referred as 'the Rules of 2006') is liable to be deducted out of compensation assessed by this Court in the light of enunciation laid down in Shashi Sharma's case (supra). Another submission made by counsel is that tax liability is also liable to be deducted.

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

Indisputably, the Tribunal has assessed compensation by relying upon judgment of this Court in Saroj Devi's case (supra) but the said judgment is no longer a good law in face of judgment of Hon'ble the Supreme Court in Shashi Sharma's case (supra). Counsel for the parties would agree that the entire exercise with regard to assessment of compensation and thereafter deduction of the amount with regard to financial assistance available to family of the deceased under the Rules of 2006 is to be undertaken by this Court.

There is no denial that salary of the deceased at the time of unfortunate occurrence was Rs.29,210/- per month. The deceased was born on 14.03.1961 and he was 50 years, 01 month and 11 days old on the date of occurrence. As the deceased was between 50 to 60 years of age, addition for future prospects to the extent of 15% of the actual salary minus tax is admissible in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors.** Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017.

The tax liability comes to Rs.17,052/- per annum. The application for compensation was filed by widow, one son, a daughter and parents of deceased Subhash Chander. Father of the deceased (applicant No.5) aged about 74 years died during pendency of proceedings before the Tribunal. Seema Devi, widow of the deceased appeared in the witness box to support cause of the claimants and she tendered into evidence her duly sworn affidavit Ex.PW3/A. In her cross-examination, she has admitted that Suman, daughter of the deceased is working as Assistant Manager in State Bank of India and getting salary of Rs.22,000/- per month. However, she denied that Rakesh Kumar, their son is gainfully employed. Counsel for the insurance company has failed to point out any material on record to establish that Rakesh Kumar was not dependent upon earning of the deceased. As the deceased left behind 4 persons dependent upon his earning, admissible deduction for personal expenses would be $1/4^{th}$.

As has been noticed hereinbefore, the deceased was slightly more than 50 years of age at the time of occurrence. In the light of enunciation laid down in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**, multiplier of 13 is to be applied for computing loss of dependency. In this manner, loss of dependency comes to Rs.37,39,010/- i.e. Rs.3,33,468 (3,50,520 – 17,052 'Tax liability') x 13 + 15% (future prospects) - $1/4^{th}$ (deduction for personal expenses).

The claimants shall be entitled to following compensation under conventional heads:-

1.	Loss of consortium to the widow	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.38,09,010/-. So far as deduction with regard to financial assistance available to family of the deceased under the Rules of 2006, Pawan Kumar Sharma, Section Officer, Haryana Tourism Corporation RW2 has deposed that details of compassionate financial assistance paid to dependents of the deceased from the date of death till date is Ex.R5. He has also placed on record document Ex.R6, an order dated 13.06.2011 passed by the Managing Director of the aforesaid Corporation granting sanction for payment of monthly financial assistance to Smt. Seema Devi, wife of late Sh. Subhash Chander for the period from 26.04.2011 to 25.04.2018 i.e. for a period of seven years. The amount @ Rs.29,210/- for the period of 84 months comes to Rs.24,53,640/-. Counsel for the appellants would inform that job of the deceased was not pensionable. After deducting financial assistance, compensation payable to the claimants comes to Rs.13,55,370/- (38,09,010 – 24,53,640). The additional amount is Rs.81,785/- (13,55,370 – 12,73,585) payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

08.11.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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