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

Date of decision: 30.8.2017

1. **FAO No.5258 of 2015(O&M)**

The Oriental Insurance Company Ltd. …..Appellant

VERSUS

Neelam and others .....Respondents

Present: Mr. Sanjiv Pabbi, Advocate for the appellant.

Mr. Vikram Bali, Advocate for respondents No.1 to 5.

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2. **FAO No.7091 of 2015(O&M)**

Mrs. Neelam and others …..Appellants

VERSUS

Gurmeet Singh and others .....Respondents

Present: Mr. Vikram Bali, Advocate for the appellants.

Mr. Sanjiv Pabbi, Advocate for respondent No.3.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

CM No.16470-CII of 2015

Prayer in this application is for condoning delay of 20 days in filing the appeal.

Heard.

In view of the averments made in the application supported by an affidavit of Vikas Chadha, Deputy Manager, Oriental Insurance

Company Ltd., the application is allowed. Delay of 20 days in filing the appeal stands condoned.

Disposed of accordingly.

Main Case

This order shall dispose of FAO No.5258 and 7091 of 2015 as these have emerged out of the same award dated 09.03.2015 passed by the Motor Accidents Claims Tribunal, Panchkula (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Shiv Kumar in a motor vehicular accident that took place on 19.03.2014.

The Tribunal assessed income of the deceased at Rs.42,000/-, added 30% for future prospects, deducted 1/3rd for personal expenses and adopted a multiplier of 11 to compute loss of dependency to the tune of Rs.42,50,400/- (correct calculation is Rs.48,04,800/-). In addition, an amount of Rs.1,00,000/- for loss of consortium to the widow and Rs.25,000/- for funeral expenses has been awarded making total compensation to Rs.43,75,400/- (correct calculation is Rs.49,29,800/-), payable with interest at the rate of 7.5% per annum from the date of petition till realization to be shared by the claimants, detailed in para 37 of the award.

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

FAO No.5258 of 2015

The sole submission made by counsel for the Company is that as the deceased was an employee of Haryana Government, family of the deceased shall be entitled to last drawn pay of the deceased till the date of his retirement on superannuation at the age of 58 years under the Haryana

Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (hereinafter to be referred as 'the Rules'), the said amount is liable to be deducted from the compensation assessed by the Tribunal or by this Court. 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 the last pay drawn by the deceased was Rs.42,280/- and the same would be available to the family for a period of 8 years and 8 months as date of birth of the deceased is 04.12.1964 and he died on 19.03.2014 when he was less than 50 years of age.

Counsel for the claimants has not disputed that family of the deceased would be entitled to the last drawn pay of the deceased till he attains the age of 58 years on the basis of his date of birth to be 04.12.1964.

Hon'ble the Supreme Court 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. However, perusal of the judgment would reveal that the Apex Court has not adverted to the issue, 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, pensionary benefits available to family of a deceased employee are not amenable to deduction for computing loss of dependency. 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.43,97,120/- (Rs.42,280/- x 104 months) 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 just and fair that only 50% of the salary to be paid to family of the victim would be deducted out of assessed compensation.

The appeal filed by the Company is disposed of in the aforesaid terms.

FAO No.7091 of 2015

Counsel for the claimants has submitted that the Tribunal has considered salary of the deceased at Rs.42,000/- per month by ignoring the deductions like LIC and GPF. It is argued that as deductions from his salary were not statutory in nature, gross salary of Rs.42,280/- is required to be taken into consideration for assessment of loss of dependency. Counsel has fairly conceded that if salary of the deceased is found to be taxable as per provisions of the Income Tax Act, tax liability may be deducted from his income/salary.

Another submission made by counsel is that the Tribunal has allowed deduction to the extent of 1/3rd but the same should be 1/4th as the deceased left behind his widow, three daughters and mother, held entitled to get compensation. As the deceased was less than 50 years of age, admissible multiplier is 13 as held in judgment of Hon'ble the Supreme

Court **Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**. It has further been argued that though the Tribunal has held that increase in income to the extent of 30% for future prospects is to be allowed but while making calculation, increase is allowed only to the extent of 15% and the mistake may be corrected. He has further argued that compensation awarded under conventional heads needs re-look and enhancement.

Counsel representing the company would urge that compensation assessed by the Tribunal is liable to be affirmed except deducting the amount which would be paid to family of the deceased under the Rules of 2006.

There is no denial that gross salary of the deceased was Rs.42,280/-. There was no statutory deduction from his salary which can be excluded for computing loss of dependency. As such income of the deceased was Rs.42,280/- per month at the time of death. The deceased was less than 50 years of age, therefore, addition in income for future prospects would be 30%. The Tribunal has wrongly allowed cut of $1/3^{rd}$ for personal expenses of the deceased. As has been rightly argued by counsel for the claimants, the deceased left behind five legal representatives held entitled to get compensation, admissible deduction would be $1/4^{th}$. In view of age of the deceased and ratio of the judgment in **Smt. Sarla Verma's case** (supra), multiplier of 13 is to be applied. Annual loss of dependency at salary of Rs.42,280/- plus 30% thereof comes to Rs.6,59,568/-.

The deceased died in March 2014. The liability to pay income tax is Rs.61,913/-. After deducting 1/4th for personal expenses and tax liability, annual income available for loss of dependency comes to Rs.4,32,763/-. After applying a multiplier of 13, loss of dependency comes to Rs.56,25,919/- (Rs.4,32,763/- x 13)

Under conventional heads, an amount of Rs.1,00,000/- for loss of consortium to the widow and Rs.25,000/- for funeral expenses awarded by the Tribunal is affirmed. The claimants shall be entitled to an amount of Rs.2,25,000/- for the children and Rs.50,000/- to the mother for loss of love and affection. They shall be entitled to an amount of Rs.25,000/- for loss of estate.

In view of the above, total compensation comes to Rs.60,50,919/-. After deducting an amount of Rs.21,98,560/- (50%) in terms of the decision in FAO No.5258 of 2015, net amount payable to the claimants comes to Rs.38,52,359/- which is less than Rs.43,75,400/- i.e. compensation awarded by the Tribunal. As such, compensation awarded by the Tribunal is reduced to the extent of Rs.5,23,041/- (Rs.43,75,400/- - Rs.38,52,359/-). 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.

AUGUST 30, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no