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

**FAO No. 5124 of 2011
DECIDED ON: OCTOBER 12, 2018**

CHOLAMANDLAM MS. GENERAL INSURANCE CO. LTD.

.....APPELLANT

VERSUS

ANGOORI DEVI & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Ms. Vandana Malhotra, Advocate
for the appellant-Insurance Company.

Mr. Sanjay Jain, Advocate
for respondents No.1 to 3.

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AVNEESH JHINGAN, J (ORAL)

The insurer of the offending vehicle bearing registration No. HR-65-4021 is in appeal against award dated 10.05.2011 passed by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal').

2. The brief facts of the case are that on 04.11.2009, Deep Chand was going towards village Tharoli on a bicycle. On his way, he was struck by a

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Truck bearing registration No. HR 65-4021 (offending vehicle), the same was being driven rashly and negligently. As a result of the accident, he suffered multiple injuries and the same proved fatal for him. FIR No. 71, dated 05.11.2009, under Sections 279 and 304-A of the Indian Penal Code, 1860 was registered at Police Station, Naggal, District Ambala.

3. The legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal after considering the facts and appreciating the evidence adduced, awarded a compensation of ₹12,42,000/- alongwith interest @9% per annum. While awarding the compensation it was considered that the deceased was employed as a beldar with Irrigation Department, Haryana.

4. The only issue raised in the present appeal is that the deceased was an employee of Haryana Government and was covered under ***"The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2006" (for brevity 'the Rules")***, therefore, while awarding the compensation under Section 166 of the Act, amount received by the claimants under the Rules should have been deducted.

5. I have heard learned counsel for the parties and perused the paper book.

6. The contention of the appellant that compensation received under the Rules was to be deducted from the amount awarded under the Act is squarely covered by the decision of the Apex Court in case of ***"Reliance General Insurance Co. Ltd vs. Shashi Sharma and others; 2016 (12) JT 409."*** The relevant para of the said judgment is reproduced as under:-

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22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants / claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the

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deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello and Patricia Jean Mahajan's cases (supra).

7. Learned counsel for the parties have not disputed that for quantifying the compensation certain factual aspects have to be gone into, for which evidence would be required to be adduced.

8. Keeping in view the facts and circumstances of the case, the matter is remitted back to the Tribunal to quantify the compensation, in accordance with law.

9. It is, however, clarified that Tribunal while re-quantifying the compensation, shall consider the decision of the Supreme Court rendered in ***Shashi Sharma's*** *(supra),* as well as law laid down by the Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & others; 2018 (4) RCR (Civil) 333.***

10. Parties are directed to appear before the Tribunal on 28.11.2018.

11. The appeal stands disposed of, accordingly.

(AVNEESH JHINGAN)
JUDGE

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

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