422 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1195 of 2012
DECIDED ON: OCTOBER 16, 2018

SMT. SUDESH AND OTHERS

.....APPELLANTS

VERSUS

JITENDER KUMAR AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Anurag Jain, Advocate
for the appellants.

Ms. Sheenu Sura, Advocate
for respondent No.2.

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AVNEESH JHINGAN, J (ORAL)

The claimants have filed the present appeal against the award dated 04.01.2012 passed by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal').

2. The appellants are widow and two minor children of Shamsher Singh (deceased). The driver of Santro car bearing registration No. CH-04C-9922 (for brevity 'the offending vehicle'); and insurer of the offending vehicle i.e.

Reliance General Insurance Company Ltd. have been arrayed as respondents No. 1 & 2 respectively.

3. The brief facts of the case are that on 14.04.2010, Shamsher Singh was going towards Barwala on his motorcycle bearing registration No.HR-20G-5544. Near crossing of Barwala Phatak, he was struck by the offending vehicle, which was being driven rashly and negligently. As a result of the accident, he suffered multiple injuries and the same proved fatal. FIR No. 162 dated 15.04.2010 under Sections 279, 337, 304-A and 427 IPC was registered at Police Station Barwala.

4. 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 considering the fact that the claimants would be getting compensation under the ***"The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2006" (for brevity 'the Rules")***, did not award the compensation under Section 166 of the Act. Only the compensation for medical treatments, expenses for last rites and for loss of love and affection, amounting to ₹1,63,027/-in total, was awarded.

5. Learned counsel for the appellants argued that the claimants were entitled to compensation under Section 166 of the Act and the same could not have been denied merely on the ground that compensation was received under the Rules.

6. Learned counsel for the insurance company argued that compensation received under the Rules has to be deducted from the compensation quantified under Section 166 of the Act.

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

8. The contention that compensation received under the Rules was to be deducted from the amount awarded under the Act is no longer res-intgra. The Apex Court in case of ***"Reliance General Insurance Co. Ltd vs. Shashi Sharma and others;*** ***2016 (12) JT 409*** has held as under:-

> *"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 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)".

9. Learned counsel for the parties have not disputed that for quantifying the compensation and for deducting the amount received under the Rules,

certain factual aspects have to be considered for which evidence would be required to be adduced.

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

11. Parties are directed to appear before the Tribunal on 20.11.2018.

12. Disposed of, accordingly.

(AVNEESH JHINGAN)
JUDGE

OCTOBER 16, 2018
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No