

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 6123 of 2011 (O&M)

Date of Decision:16.02.2018.

Jaspal Kaur and others

.....Appellants

Versus

Jitender Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.C. Gupta, Advocate
for the appellants.

Mr. A.S. Gill, Advocate
for respondents No. 1 and 2.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.(Oral)

The present appeal arises out of an award dated 14.10.2010 passed by the Motor Accidents Claims Tribunal, Faridabad (for short 'the Tribunal').

The appeal has been filed by the appellants for enhancement of compensation awarded by the Tribunal.

The issue raised has to be considered in view of the decision of the Supreme Court in ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others*** 2016 (12) JT 409.

Similar matters involving the same issues have been remitted back to the Tribunal, vide order dated 30.10.2017 passed in F.A.O. Nos. 1256 and 398 of 2015 (*Bharti AXA General Insurance Company Ltd. Versus Smt. Santosh Devi and others and Smt. Santosh Devi and others Versus Sanjiv*

Kumar and others), therefore, this matter is also required to be remitted back to the Tribunal.

So far as the contention with regard to deduction of the compensation awarded under '*The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules 2006*' (for short 'the rules') is concerned, the same is also covered by the decision of the Supreme Court in *Shashi Sharma's case (supra)*. The relevant para No.22 of the said judgment is reproduced 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)."

According to the above referred judgment, the compensation received under the Rules has to be deducted from the claim assessed by the Tribunal.

Accordingly, the matter is remitted back to the Tribunal to quantify the compensation keeping in view the aforesaid decision.

Parties are directed to appear before the Tribunal on 04.04.2018.

16.02.2018.
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No