IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

108

FAO No.4304 of 2012 (O&M)
Date of Decision: 20.11.2018

Ram Rati and others ...... **Appellants**

Versus

Vishnu Kumar and others ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Deepak Balyan, Advocate for the appellants.

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

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ANIL KSHETARPAL, J. (ORAL)

Pursuant to the order passed by the Hon'ble Supreme Court on 08.08.2016, review application was allowed on 04.09.2018. The order passed by the Hon'ble Supreme Court dated 08.08.2016 is extracted as under:-

> *"Learned counsel for the petitioner seeks permission to withdraw this petition with liberty to file review petition before the High Court.*
>
> *Permission sought for is granted.*
>
> *The special leave is dismissed as withdrawn with liberty to file review petition before the High Court. If the petitioner fails before the High Court, liberty is also granted to the petitioner to move this Court once over again challenging the main order as well as the order passed in the Review Petition."*

Only issue which has been argued before this Court is with respect to adjustment (deduction) of entitlement of the family to the pay and other allowances that was last drawn by the deceased employee under

Haryana Compassionate Assistance Dependents of the deceased Government Employee's Rules, 2006 while calculating the compensation payable. Hon'ble Supreme Court while dealing with the aforesaid Rules have held that the payment under the aforesaid rules is liable to be adjusted in the case of *Reliance General Insurance Company Ltd. Vs. Shashi Sharma and others (CA No.9654 of 2016)*.

Learned counsel for the appellants has brought to the notice of this Court a judgment passed in FAO No.3064 of 2013, decided on 30.11.2017 while deciding the case of *Kamla Devi and others Vs. Sahib Singh and others* wherein after considering the judgment passed by the Hon'ble Supreme Court in the case of Reliance General Insurance Company Ltd. (supra), a Coordinate Bench has held that whatever pension the family would have been entitled to in absence of the Rules of 2006 (supra), cannot be deducted. In the aforementioned case, adjustment of 50% of the amount has been made. Against the aforesaid judgment, Special Leave to Appeal (C) No.5926 of 2018 has also been dismissed by the Hon'ble Supreme Court on 14.03.2018.

Learned counsel for the appellants has produced before the Court a copy of the Rules of 2006. It is apparent from the reading of the aforesaid rules that under Rule 5(1)(b), for a period of 12 years or till the date the employee would have retired on attaining the age of superannuation whichever is earlier if the employee at the time of his death was between the age of 35 years and 48 years, the family shall continue to receive a sum equal to the pay and other allowances that was last drawn by the deceased employee in normal course. Rule 5 is extracted as under:-

"5. (1) On the death of any Government employee, the family of the employee would receive as financial assistance a sum equal

> *to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim-*
>
> *(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty five years;*
>
> *(b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty five years but had not attained the age of forty eight years;*
>
> *(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty eight years.*
>
> *(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.*
>
> *(3) The family of a deceased Government employee who was in occupation of a Government residence would continue to retain the residence on payment of normal rent/licence fee for a period of one year from the date of death of the employee.*
>
> *(4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.*
>
> *(5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance."*

In the present case, Sh. Chander Rattan-deceased was aged about 44 years on the date of death 24.12.2008. In absence of Rules 2006 (supra), the dependents-claimants would have been entitled to 50% of the last pay drawn as family pension for a period of 7 years and thereafter it would have reduced to 30%. Accordingly, taking clue from the judgment passed by the Court in the case of Kamla Devi (supra), the amount which would have been payable to the dependents as pension even in absence of rules cannot be deducted while calculating the compensation to be awarded by the Tribunal. This is also in consonance with the judgment passed by the Hon'ble Supreme Court in the case of *Helen C. Reballo Vs. Maharashtra State Road Transport Corp., 1998 AIR (SC) 3191* wherein it has been held that the pension receivable cannot be adjusted while calculating the compensation payable under the Motor Vehicles Act, 1988.

Accordingly, learned counsel for the parties have submitted a calculation sheet and amount enhancement comes to Rs.9,68,452/-. The calculation sheet is extracted as under:-

Heads	***Amount***
Income	Rs.21,385/-
Annual income	21,385 x 12 = 2,56,620/-
Income tax 1,10,000/- exempted (1,10,000–1,50,000) @ 10% = 4,000 (1,50,000–2,50,000) @ 20%=20,000 Above 2,50,000 @ 30% = 1986	Rs.25,986/- (total income tax)
Annual Dependency	(2,56,620 – 25,986) Rs.2,30,634/-
Future Prospects 30% (69,190)	2,30,634 + 69,190 = 2,99,824/-
Dependency	2,99,824 x 14 x 3/4 = 31,48,152/-
Conventional Heads i) Loss of Estate ii) Consortium iii)Funeral expenses	 Rs.15,000/- Rs.40,000/- Rs.15,000/- (Rs.70,000/-) (31,48,152 + 70,000) = Rs.32,18,152/-
– Amount receivable as Haryana Govt. Assistance as full last drawn salary till 12 years	(32,18,152 – 30,79,440) Rs.1,38,712/-
Pension Addition 21385 x 12 x 7 x 1/2 = 8,98,170 21385 x 12 x 5 x 30/100 = 3,84,930	(12,83,100 + 1,38,712) = Rs.14,21,812/-
Amount paid as assessed by the Tribunal	Rs.4,53,360/-
Enhanced amount	(14,21,812 – 4,53,360) = **Rs.9,68,452/-**

The enhanced amount shall be payable with interest @ 7.5% from the date of filing of the claim petition till realization.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is disposed of.

(ANIL KSHETARPAL)
JUDGE

20.11.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No