IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2116 of 2013 (O & M)
Date of Decision:-06.02.2018

Harjit Singh

...Appellant

Versus

Raj Kumar and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL J.(Oral)

The present appeal has been preferred by the owner against the award rendered by the MACT, Hisar whereby on account of death of one Smt. Kusum wife of Raj Kumar aged 40 years working as a Government Teacher in a school unfortunately succumbed to injuries in an accident occurred on 13.3.2009.

Mr. Ajay Jain, Advocate learned counsel appearing for the appellants submitted that the vehicle in question i.e. the truck bearing Registration No. HR69-0676 was not insured by the insurance company. The learned MACT on the basis of the evidence brought on record had taken the income of the deceased as Rs.21,390/- and awarded future benefits of 30% being a Government employee, made a deduction of 1/3rd and applied multiplier of '15' and awarded compensation under various conventional heads and thus awarded total compensation amounting to Rs.30,15,000/- alongwith interest @ 9%. He further submitted that for a Government employee the criteria of assessing the income should not be on the basis of the future income of the deceased but only on the future prospect escalation in the income in view of the ration decidendi culled out by Hon'ble Supreme Court in **Reliance General Insurance Company vs Shashi Sharma and others** **2016(4) RCR (Civil) 569**, therefore, the liability by taking the income as Rs.21,390/- and future prospect as 30%, the liability would not be exceeding Rs.7,56,000/- without interest.

Respondents-claimants had put in appearance through Mr. K.S. Dhanora, Advocate but there is no representation on their behalf. Same was the position on the last date also. Therefore, I proceed to decide the appeal.

I have heard learned counsel for the appellant, appraised the paper book.

The findings arrived at by the Hon'ble Supreme Court in the aforementioned judgment in paragraph 22, reads 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).

Concededly the accident, age and income of the deceased are not controverted. The only question which has been raised before me is whether the MACT could take the escalated income of the deceased for the purpose of arriving at a compensation or only the future prospect, the answer to the aforementioned is already considered by the Hon'ble Supreme Court in the extraction of the findings ibid. In my view therefore the compensation of Rs. 30,15,000/- is liable to be reduced. The compensation would be only by taking 30% future prospects of the income of Rs.21,391/- per month, which comes to Rs.7,56,000/- by applying the multiplier of 15 after deduction of 1/3rd.

Accordingly, the award of the learned MACT is modified, however, the interest part is also reduced to 6%. The compensation on conventional heads is increased to Rs.70,000/- as per latest judgment of Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others, 2017 SCC 1270** by applying the powers under Order 41 Rule 33 CPC.

The appeal stands allowed in the aforementioned terms.

February 06, 2018 **(AMIT RAWAL)**
Vijay Asija **JUDGE**

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