IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2457 of 2013 and
Cross-Objection No.81-CII of 2013
Date of decision: 15.01.2018

Reliance General Insurance Company Ltd.
....Appellant

Versus

Geeta Devi and others
....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Suman Jain, Advocate,
for the appellant-Insurance Company.

Mr. Dheeraj Narula, Advocate,
for respondent Nos.1 to 7-cross objectors.

RITU BAHRI J. (Oral)

Reliance General Insurance Company Ltd.-appellant has filed this appeal (FAO No.2457 of 2013) against the award dated 07.02.2013 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.23,40,000/- has been awarded in favour of the claimants-respondent Nos. 1 & 4 to 7 on account of death of Atma Ram in a motor vehicular accident which took place on 27.01.2012. Respondent No. 1 is widow, respondent Nos.2 to 6 are children and respondent No.7 is father of deceased Atma Ram.

On the other hand, cross objectors-respondent Nos.1 to 7 (claimants) have filed Cross Objection No.81-CII of 2013 seeking enhancement of compensation awarded by the Tribunal vide aforesaid

Award dated 07.02.2013.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 27.01.2012, Atma Ram (since deceased), after having a talk with his brother Chhotu, was going towards bus-stand on a motorcycle bearing registration No. HR-24-N-3077. In the meantime, a truck-trolla bearing registration No.HR-47-B-0247, being driven by Palvinder Singh-respondent No.8 (respondent No.1 in claim petition) in a rash and negligent manner, came from the side of Dabwali and struck against the motorcycle of Atma Ram, as a result of which he received injuries on his head, ear, chest and legs. The injured was taken to General Hospital, Sirsa, but he succumbed to the injuries. Driver of the offending vehicle ran away after causing the accident. With regard to the accident, FIR No.52 dated 28.01.2012, under Sections 279/304-A/427 IPC was registered at Police Station, City, Sirsa, on the statement of Chhotu Ram against driver-respondent No.8. Consequently, the claimants-respondent No.s 1 to 8 filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of offending vehicle by Palvinder Singh-respondent No.8 and thus, returned the finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Mahender Singh (PW-2) and Chhotu Ram (PW-4), who were eye witnesses of the accident. Claimants have also proved on record copy of FIR Ex.P44, report under Section 173 Cr.P.C. Ex.P5 and postmortem report Ex.P6.

The Tribunal has further observed that claimants-Saroj and

Seema were married daughters of deceased Atma Ram, therefore, they could not be considered his dependents. The remaining claimants being widow, unmarried children and father of deceased, were held entitled for the compensation.

Atma Ram (deceased) was working as clerk in the office of Civil Surgeon, Sirsa. As per salary certificate Ex.P1, he was getting a salary of Rs.22,095/- per month. Accordingly, his income was taken as Rs.22,095/- per month i.e. Rs.2,65,140/- per annum, out of which, 1/5th was deduced towards personal expenses of deceased. Accordingly, annual dependency of claimants came to Rs.2,12,112/-. Atma Ram was 55 years of age at the time of accident/death and multiplier of 11 was applied. Thus, the claimants were found entitled to compensation of Rs.23,33,232/-. In addition to it, Rs.2000/- were awarded towards funeral expenses, Rs.2000/- as transportation and Rs.2500/- as loss of estate. Hence, claimant Nos.1, 3 to 7 were found entitled to a total compensation of Rs.23,39,732/-, which was rounded off to Rs.23,40,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeal.

During the pendency of appeal, claimants-respondent Nos. 1 to 7 have filed Cross Objection No.No.91-CII of 2013 seeking enhancement of compensation awarded by the Tribunal.

The Insurance Company-appellant is not challenging the finding given by the Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of offending vehicle by its driver-respondent No.8 (respondent No.1 in claim petition). Learned counsel for the appellant has argued that Geeta Devi (PW-3), who is widow of deceased, has admitted that she was receiving Rs.20,000/- per month under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. The issue involved in the present case has been examined by Hon'ble the Supreme Court in ***Reliance General Insurance Co. Ltd. vs. Shashi Sharma,*** 2016 (4) RCR (Civil) 569, wherein it has been held that the insurance company is entitled to deduct the amount payable to the dependents of deceased employee in terms of Rule 5 (1) of the Rules 2006, towards financial assistance equivalent to the loss of pay and wages of the deceased employee. However, company is liable to pay compensation towards loss of future escalation of income and other benefits. It has been further held that the insurance company cannot deduct the amount of family pension, Life Insurance Provident Fund etc. In para 22 & 23 of the judgment, it has been 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 dependents/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 case (supra)."

23. A Priori, appellants must succeed only to the extent of amount receivable by the dependents of the deceased Government employee in terms of Rule 5 (1) of the Rule 2006, towards financial assistance equivalent to the loss of pay and wages of the deceased employee for the period specified."

The aforesaid judgment passed by Hon'ble the Supreme Court has been followed by this Court in ***Kamla and others vs. Krishna Tupe (KB Tube) and another,*** FAO No.3439 of 2012 (decided on 13.11.2017) and ***Salochna Devi and others vs. Ashwani Kumar and others,*** FAO No.5919 of 2010 (decided on 13.12.2017).

In the present case, accident had taken place on 27.01.2012. On that date, Atma Ram (deceased) was aged about 55 years. He would have retired (if he would alive) from services on 31.05.2015. As per admission of Geeta Devi (widow), she was getting Rs.20,000/- per month as per Rule 2006. Meaning thereby, she got this amount for 40 months up to 31.05.2015, which came to Rs.8,00,000/- (20,000/- x 40). In view of the judgment passed by Hon'ble the Supreme Court in ***Shashi Sharma's*** case (supra), 50% of this amount i.e. Rs.4,00,000/- has to be reduced from the entire compensation. In view of the above, appeal filed by the Insurance Company-appellant deserves to be partly allowed.

Resultantly, present appeal (FAO No.2457 of 2013) filed by the Insurance Company-appellant is **partly allowed** and Cross Objection No.81-CII of 2013 filed by the claimants-respondent Nos. 1 to 7 is also **partly allowed**.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments passed in ***Shashi Sharma's*** case (supra), ***Sarla Verma and others vs. Delhi Transport Corporation and another***, **2009 (3) RCR (Civil) Page 77**, and ***National Insurance Company Limited vs. Pranay Sethi and others***, 2017 SCC 1270, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.22,095/- per month
(ii)	15% of (i) above to be added as future prospects	22,095 + 3314 = Rs.25,409/-
(iii)	1/4th of (ii) above is deducted as personal expenses of the deceased	25,409 – 6352 = Rs.19,057/-
(iv)	Compensation after multiplier of 11 is applied	Rs.19,057/- x 12 x 11 = Rs.25,15,524/-
(v)	Compensation under the conventional heads	Rs.70,000/-
(vi)	Total	Rs.25,85,524/-

(vii)	50% of the amount received under 2006 Rules (as per ***Shashi Sharma's*** case (supra) is to be deducted	Rs.25,85,542 – 4,00,000 = Rs.21,85,542/-
(viii)	**TOTAL COMPENSATION AWARDED**	**Rs.21,85,542/-**

The amount of compensation of **Rs.21,85,542/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others",*** **2015 (1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal and cross-objections are partly allowed.

(RITU BAHRI)
JUDGE

15.01.2018
ajp