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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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XOBJC No.57-CII of 2017 and
FAO No.10598 of 2014 (O&M)
Date of Decision: 19.12.2018

Smt. Swarn Kanta and others

Appellants

Versus

Kewal Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.S. Chathrath, Advocate for
Mr. Amit Sharma, Advocate
for the appellants.

Mr. Sanjeev Goyal, Advocate
for respondent No.3/Cross-Objector.

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AVNEESH JHINGAN, J (Oral):

The award dated 01.09.2014 passed by the Motor Accident Claims Tribunal, Chandigarh [for brevity 'the Tribunal'], in MACT Case No.30/270 of 2010, has been assailed by the legal heirs of Dr. Rajinder Samhotra seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. The insurer of Tata 207 bearing registration No. PB-10CH-7026 has filed cross-objection, being aggrieved of the quantum of compensation.

The brief facts necessary for adjudication of the present appeal and cross-objection are that on 05.05.2010, Dr. Rajinder

Samhotra (deceased) alongwith Dr. Bhuvan Samhotra was travelling in a car bearing registration No. CH-03-9410. They were being accompanied by Rohit Samhotra, who was in another car. On their way, the car in which Dr. Rajinder Samhotra was the passenger, was hit by a rashly and negligently driven offending vehicle. As a result of the impact, both the occupants sustained injuries and died at the spot. FIR was registered.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹59,26,904/- alongwith interest @ 7.5% per annum.

In the claim petition, it was pleaded that the deceased was 56 years old at the time of accident and he was working as a Deputy Director in the Office of Director General Health Services, Haryana.

Heard learned counsel for the parties, perused the paper book and relevant documents produced.

The claimants have filed the appeal for enhancement of compensation and their grievance is that the Tribunal awarded the future prospects, but while calculating the compensation, did not mention the future prospects.

The insurer in the cross-objection has challenged the quantum of compensation on the ground that the deceased was an employee of Haryana Government and he was covered under the *Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006* [hereinafter referred to as 'Rules'] and no amount received under the Rules has been deducted by the Tribunal. He relies upon the decision of the Supreme Court in ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others 2016 (12) JT 409.***

As per the decision of the Supreme Court in ***Shashi Sharma's*** case (supra), the amount received under the Rules has to be deducted. The Supreme Court 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)."

Keeping in view the law laid down by the Supreme Court, certain factual aspects have to be decided like deduction of the amounts received under the Rules. In order to decide the issues, the parties will have to adduce evidence.

The matter is remitted back to the Tribunal to quantify the compensation afresh in accordance with law. The parties are directed to appear before the Tribunal on 30.01.2019.

The appeal and cross-objection are disposed of in the afore-mentioned terms.

[AVNEESH JHINGAN]
JUDGE

December 19th, 2018
pankaj baweja

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No