IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 2052 of 2015
Date of decision : 18-05-2018

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Sumitra Devi and others

...........Appellants

Versus

Dharam Pal and others

...........Respondents

* * * * *

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sagar Aggarwal, Advocate for the appellants.

Mr. Sanjeev Goyal, Advocate for respondent/Insurance Company.

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RITU BAHRI, J.

This appeal has been filed by the appellants-claimants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as `the Tribunal') vide award dated 22.12.2014 on account of death of Rajender Singh in a motor vehicular accident which took place on the intervening night of 3/4.9.2012 on G.T Road near SBI Panipat. Appellant-claimant no.1 is the widow of Rajender Singh and appellants-claimants no. 2 & 3 are the sons of Rajender Singh.

FACTS NOT IN DISPUTE

Brief facts of the case are that on the intervening night of 3/4.9.2012, EHC Rajender Singh along with Constable Joginder Singh and

ESI Subhash Chander were on duty on PCR No.392. The PCR was parked on the left side of the G.T Road. At the same time, an Alto Car No. HR-06K-8014 came from the Delhi side i.e from the Sanjay Gandhi Chowk side and hit the PCR. The car was being driven in a rash and negligent manner by respondent no.2. The PCR turned upside down and all the three occupants of the PCR suffered injuries on their person. EHC Rajender Singh received multiple grievous injuries on his body and died at the spot. With regard to the accident, FIR No. 1142 dated 4.9.2012 was also registered under Sections 279,304-A,353,333, 186 and 114 of Indian Penal Code at Police Station City, Panipat. Consequently, the appellants-claimants 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 i.e Alto car no. HR-06K-8014 by respondent no.2 Ashish. This finding was rightly given on the basis of deposition of Joginder Singh (PW-3), who was eye witness of the accident. Further the appellants-claimants have proved the police report EX.P-3 Charge sheet Ex. P-4 and postmortem report of deceased as Ex. P-5.

PW-1 SI Rajinder Singh, proved the salary certificate of EHC Rajender Singh as Ex.P-1 which shows that he was drawing a monthly salary of Rs.27,398/- which included basic pay, DA, HRA and other perks. After taking into consideration, the deductions towards GPF, GIS and income tax etc., the income of deceased EHC Rajinder Singh was taken to be Rs.24,000/- per month for assessment of the compensation. He was 42 years of age as on the day when the accident took place. In view of the ratio of law laid down in Oriental Insurance Company Limited vs. Saroj Devi and others and Sarla Verma and others vs. DTC and others 2009 (3) RCR (Civil) 77, compensation amount was assessed by the Tribunal as under:

1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
Monthly income in rupees	**Actual age of the deceased**	**Notional age (actual age of the deceased + the number of years of full last drawn salary as per compassionate Rules**	**Increase in future income as per Sarla Verma**	**Annual dependency**	**Multiplier as per Sarla Verma's (to be broken into 2 parts if multiplier spills over the age of 58 years before + after superannuation**	**Compensation for full Salary period i.e. Upto 58 years (rounded off)**	**Compensation for pension period i.e after 58 years (rounded off)**	**Total compensation (column 8 + column 9 +coventional heads i.e Rs.20,000/-)**
24000	**42**	**42+12**	**NIL**	**2/3rd x12**	**11(4+7)**	**7,68,000** **16000x4x12**	**6,72,000** **8000x7x12**	**14,40,000**

In addition to it, an amount of Rs.20,000 was awarded towards consortium, Rs.30,000/- towards loss of love and affection, Rs.10,000 toward transportation, funeral and last rites of the deceased. Accordingly the appellants-claimants were held entitled to a total compensation amount of Rs.15,00,000 along with interest thereon at the rate of 7.5% from the date of filing of the claim petition till realization. Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

REASSESED COMPENSATION

The claimant is seeking` enhancement of the compensation on the ground that the salary taken by the Tribunal as Rs.24,000 is on the lower side as the GPF and GIS could not be deducted from the salary for assessing the compensation payable to the appellants-claimants. While the gross income of the deceased was Rs.27,398/-, only income tax was liable to be deducted. Appellants-claimants are seeking reassessment of the compensation while referring to a judgment passed by this Court in the case of **'Kamla Devi and others vs. Sahib Singh and others' FAO No.3064 of**

2013 decided on 30.11.2017. The question which arose for determination in Kamla Devi's case (supra) is, whether the entire amount payable to family of the deceased under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short `the Rules of 2006') is amenable to deduction for computing compensation payable to the claimants. In that case, there was no dispute that the deceased was a regular employee of Haryana Roadways and his job is pensionable. It was held in that case that under the circumstances, in case deduction to the extent of Rs.19,85,472/-, the amount which was granted to the family of the deceased under the Rules of 2006, is allowed, the Rules of 2006 would operate prejudicially against the claimants causing loss of pensionary benefits to which family of the deceased was entitled from the date of death till the age of superannuation which can neither be spirit of the Rules nor of the judgment of Hon'ble the Supreme Court as the provisions of the Motor Vehicles Act providing for compensation to the victim family is a benevolent legislation framed with an avowed social object to achieve. In this view, it was held that when the financial assistance is granted to a dependent or family of the deceased, only 50% amount to be paid to family of the victim would be deducted out of compensation assessed. The judgment passed by this Court in this case was upheld by Hon'ble the Supreme Court while dismissing Petition for Special Leave to Appeal (c) No.5926 of 2018. In **Kamla Devi' case (supra)**, this Court has referred to the judgment of Hon'ble the Supreme Court in the case of ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569***. Perusal of the judgment in **Shashi Sharma's case (supra**) would reveal that Hon'ble the Apex Court has not adverted to the issue that had the Rules of

2006 extending assistance to family of the deceased employee been not in existence, family would have been entitled to pension to the extent of 50% of the last drawn pay. As per the settled position in law, pensionary benefits available to family of the deceased employee are not amenable to deduction for computing loss of dependency.

The fact of accident is admitted and proved. It stands established that the deceased had died as a result of the accident. Finding of negligence has rightly been given by the Tribunal and no interference is required on that account. Applying the ratio of the judgments in **Kamla Devi' case (supra) and Shashi Sharma's case (supra)**, and in view of the judgments passed by Hon'ble the Supreme Court in Sarla Verma and others vs. Delhi Transport Corporation and anothers 2009(3) RCR (Civil) 77 and National Insurance Company Limited Vs. Pranay Sethi and others, Special leave Petition (Civil) No. 25590 of 2014 (decided on 31.10.2017), the compensation is hereby reassessed as under:-

Sr. No.	***HEADS***	***CALCULATIONS***
(i)	Gross Income (as per Ex.P-1)	Rs.27398/-
(ii)	30% of (i) above to be added as future prospects	Rs.27398/- + Rs.8219/-=Rs.35,617/-
(iii)	Annual income	Rs.4,27,407/-
(iv)	Income after deduction of income tax	Rs.4,27,407/- - Rs.17,740/-= Rs.4,09,667/-
(v)	1/3rd of (iv) above is deducted personal expenses of the deceased	Rs. 4,09,667/- - Rs.1,36,556= Rs.2,73,111/-
(vi)	Compensation after multiplier of 14 is applied	Rs.2,73,111/- x14= Rs.38,23,554/-
(vii)	Compensation under conventional heads	Rs.70,000/-
(viii)	Less Ex gratia	Rs.18,00,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.20,93,554/-
(x)	Enhanced amount of compensation	Rs.20,93,554/- - Rs.15,00,000/- =Rs.5,93,554/-

The enhanced amount of compensation of Rs.5,93,554/- shall be payable within a period of two months from the date of receipt of a certified copy of this order. Then enhanced amount of compensation shall carry interest @ 7.5% 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 "Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. And others, Civil Appeal No. 448 of 2018 (decided on 19.01.2018). Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent nd the presnet appeal is partly allowed.

18-05-2018 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned Yes

Whether reportable No