IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.4930 of 2013 (O&M)
Date of decision:- 31.08.2018

Suman and others

.......Appellants

Versus

Rajinder Singh and others

........Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. S.P. Chahar, Advocate for the appellants.

Mr. S.P. Khatri, Advocate for the respondents.

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TEJINDER SINGH DHINDSA J.

CM-20916-CII-2013

In view of the averments made in the application which is duly supported by an affidavit, delay of 139 days in re-filing the present appeal is condoned.

Application disposed of.

CM-20917-C-II-2013

The instant application has been filed under Section 5 of the Limitation Act seeking condonation of 03 days delay that has occurred in filing of the accompanying appeal.

For the reasons stated in the application, prayer is allowed. Delay of 03 days in filing the present appeal is condoned.

Application disposed of.

CM-18472-CII-2018

By recording a 'no objection' from counsel representing contesting respondent Insurance Company, prayer is allowed. Order dated

20.06.2012 granting monthly financial assistance to Smt. Suman appellant No.1 for 12 years on account of demise of her husband is taken on record as Annexure A-1.

Application disposed of.

Main case

Briefly it may be noticed that a claim petition under Section 166 of the Motor Vehicles Act was filed before the Motor Accident Claims Tribunal, Rohtak, seeking compensation to the tune of Rs.40,00,000/- on account of death of Devinder Kumar in a motor vehicle accident that took place on 20.01.2012. The claimants were the widow, minor son and parents of the deceased. In the claim petition it was asserted that while Devinder Kumar (Since deceased) was proceeding on his car bearing registration No.HR-12S-3399, a truck bearing Registration No.HR-69A-3061 and which was being driven in a rash and negligent manner, stuck against the car and on account of which Devinder Kumar, received multiple injuries and succumbed to the same. Regarding the accident FIR No.31 dated 20.01.2012 under Sections 279 and 304-A IPC was registered at Police Station Kharkhoda, District Sonepat, on the statement of one Prem Singh, who was an eye-witness to the accident.

The claim petition having been contested the following issues were framed by the Tribunal:-

> "*1.Whether the accident in question occurred due to rash and negligent driving of vehicle bearing no. HR-69A-3061 by respondent no.1?OPP*
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> *2. If issue no.1 is proved, whether Devender Kumar son of Shri Ram Kumar has died due to the injuries/sustained in the above said accident, if so to what amount of compensation and from*

whom, the petitioners are entitled to?OPP

3. Whether there was willful violation of the terms and conditions of the insurance policy, if so to what effect/?OPR

4. Relief."

On issue No.1 findings were returned by the Tribunal that the death of Devinder Kumar took place on account of injuries suffered in the accident that took place on 20.01.2012 on account of rash and negligent driving of truck bearing registration No.HR-39A-3061.

Insofar as Issues No.2 and 3 are concerned the Tribunal has awarded a total compensation amount of Rs.3,55,000/- in favour of the claimants and has held the Insurance Company as also driver/owner of the offending vehicle to be jointly and severally liable to pay the compensation amount.

While computing the compensation amount, age of the deceased as on the date of accident has been taken as 34 years. The deceased was working as PTI in a Government Senior Secondary School, drawing a monthly salary of Rs.23,150/- and which has been rounded of by the Tribunal to Rs.23,000/-. A 50% increase in salary towards future prospects has been granted. A deduction of 10% of the salary towards income tax/surcharge has been made. A deduction of $1/4^{th}$ has also been made towards the personal and living expenses of the deceased. Multiplier of 16 has been applied to the multiplicand. Furthermore, since the deceased was a Government employee under the State of Haryana and which had notified the rules called the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006, to provide Financial Assistance to the dependents of the Government employees, the Tribunal has taken a view that since dependents of deceased Devinder

Kumar would be entitled to receive an amount equivalent to the last drawn pay and another allowances over a period of 15 years and by taking monthly salary to be Rs.23,000/- a deduction of Rs.41,40,000/- has been made (Rs.23,000x12x15). Under the conventional heads a sum of Rs.15,000/- has been awarded i.e. Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. In such manner the total compensation amount determined by the Tribunal is Rs.3,55,000/- and to be paid alongwith interest @ 7.5% per annum from the date of filing of the claim petition till final realization.

It may be noticed that the Insurance Company has not assailed the award dated 10.11.2012 passed by the Motor Accident Claims Tribunal. The findings recorded by the Tribunal as regards the death of Devinder Kumar, having taken place on account of injuries suffered in the accident that took place on 20.01.2012 involving the offending truck and being driven in a rash and negligent manner as such have attained finality.

The only aspect that survives in the instant appeal is with regard to quantum of compensation.

Counsel for the appellants/claimants would argue that the liability of the Insurance Company to pay compensation is distinct and separate from any other form of financial assistance which may be available to the dependents of the deceased. It is urged that the Compassionate Assistance Policy formulated by the State of Haryana, is a service benefit accruing to the dependents of the deceased by virtue of the length of service and hard-work that had already been put in. As such it is contended that the amount that was payable to the claimants/appellants from the State of Haryana as per Compassionate Assistance Policy could not have been deducted from the compensation amount assessed by the Tribunal. Further argued that the Tribunal has erred in deducting the income tax/surcharge etc. as provision for standard exemption from tax and thereafter determination of slab has not been kept in view. Counsel further argues that even under the conventional heads the compensation amount awarded is much on the lower side and requires to be enhanced.

Per contra learned counsel representing the respondent-insurance company submits that the award passed by the Tribunal and grant of compensation amount of Rs.3,55,000/- is based on cogent and valid reasoning and upon due appreciation of evidence adduced on record. Counsel submits that no interference in the matter is called for.

Having heard counsel for the parties at length and having perused the original records of the case that were requisitioned, this Court is of the considered view that the compensation amount awarded would require to be re-assessed and enhanced on certain heads and by applying parameters/guidelines laid down by the Apex Court in ***National Insurance Company Ltd. Vs. Praney Sethi and others 2017 (4) RCR (Civil) 1009.***

The appellants/claimants had asserted that Devinder Kumar (since deceased) was serving as PTI in Government Senior School, Kosli, District Rewari and was drawing a salary of Rs.23,000/- per month. Appellants had examined PW3 Ramdhari, Clerk, Government Senior Secondary School, Kosli, District Rewari, who had brought the summoned record i.e. attested copies of the LPC and salary record of the deceased and adduced the same as Exhibits P-3 and P-4 and duly proved that the monthly salary of Devinder Kumar was Rs.23,150/-. The claimants/appellants have themselves placed on record document at Annexure A-1 issued by the Principal of the Government Senior Secondary School, vide office order No.15/12 dated 20.06.2012, reflecting pay of the deceased to be

Rs.22775/-. This Court would accept the monthly salary of deceased to be Rs.22,775/- for purposes of computation of compensation amount.

Since the deceased was less than 40 years of age and was in permanent Government service, the Tribunal has rightfully awarded 50% increase in salary towards future prospects.

The Tribunal has made a deduction of 10% from the salary towards income tax and surcharge. In this regard a rectification is being done inasmuch as from the annual salary Rs.1,80,000/-would be reduced i.e. the amount exempted from tax as would be relevant in the year 2012 and it is upon the balance that 10% tax would be charged and calculations made. It is so directed.

The contention raised by counsel for the appellants that the amount admissible to the dependants/appellants herein under the 2006 rules is not to be deducted from the compensation amount assessed is without merit, as it would be against the dictum laid down by the Apex Court in the case of ***Reliance General Insurance Co. Ltd. V. Shashi Sharma and others 2016 (4) R.C.R. (Civil) 569***. In the afore-noticed judgment the Apex Court had considered the 2006 rules framed by the State of Haryana itself and had held as follows:-

The claimants are legitimately entitled to claim for the loss of "pay and wages" of the deceased Government employee against the tortfeasor of Insurance Company, as the case may be, covered by the first part of Rule 5 under the Act of 1988. The claimants or dependents of the deceased Government employee (Employed by State of Haryana), however, cannot set up a claim for the same subject falling under the first part of Rule 5-"pay and allowances", which are receivable by them from employer (State) under Rule 5(1) of the Rules of 2006. In that, if the deceased *employee was to survive the motor accident injury, would have remained in employment and earned his regular pay and allowances. Any other interpretation of the said Rules would inevitably result in double payment towards the same head of loss of "pay and wages" of the deceased Government employee entailing in grant of bonanza, largesse or source of profit to the dependants/claimants. Somewhat similar situation has been spelt out in Section 167 of the Motor Vehicles Act, 1988, which reads thus:*

> ***167. Option regarding claims for compensation in certain cases.---****Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."*
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> *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 of 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)

However, the Tribunal has made an error in reducing the amount equivalent to the last drawn pay and other allowances of the deceased over a period of 15 years i.e. Rs.23,000/- x 12 x 15 is equal to

Rs.41,40,000/-.

Rule 5 of the 2006 reads as under:-

"5(1) On the death of any Government employee, the family of the employee would continue to 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 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 of 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 of employee would have retired from Govt. Service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty eight years."

The appellants have placed on record document at Annexure A-1 which is in the nature of an Office Order bearing No.15/12 dated 20.06.2012 issued from the Office of the Principal, Government Senior Secondary School, Kasoli (Rewari) and which would clearly demonstrate that the date of birth of the deceased was 13.11.1976. Date of death being 20.01.2012 and deceased having attained the age of 35 years at the time of his death, Rule 5 (1) (b) has been applied and the monthly financial assistance admissible to claimants/appellants has been determined over a period of 12 years i.e. from 21.01.2012 to 31.01.2024. As such the deduction from the compensation amount on account of the benefits under the 2006 Rules would be Rs.22,775/- x 12 x 12 is equal to Rs.32,79,600/- instead of Rs.41,40,000/-. It is so directed.

Insofar as the Tribunal having made a $1/4^{th}$ deduction from the monthly salary on account of personal and living expenses of the deceased, no interference is warranted. In the claim petition it had been specifically averred and even the widow Smt.Suman in her statement as PW1 had stated that all the claimants i.e. she herself minor son as also parents were fully dependent upon the income of the deceased.

This Court finds that the Tribunal has awarded a paltry sum of Rs.15,000/- under the conventional heads. By applying the parameters laid down in ***Parney Sethi's case (supra)*** Rs.70,000/- is awarded under the conventional heads , Rs.15,000/- towards loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- towards funeral expenses.

In view of the above, the compensation amount is re-assessed and calculated as follows:-

Sr. No.	**Head**	**Amount**
1.	Income per month	₹22,775/-
2.	50% increase towards future prospects	₹22,775+11387.5=34162.5
3.	Annual income	₹34162.5x12=4,09,950/-
4.	Exemption from tax	₹1,80,000
5.	10% income tax	₹4,09,950 - 1,80,000=2,29,950 x 10%=₹22,995/-
6.	Balance amount after paying 10% tax	₹4,09,950-22,995=₹3,86,955/-

7.	Balance amount after ¼th deduction towards Personal and Living Expenses	₹3,86,955-96738.75=₹2,90,216.25/-
8	Income after applying multiplier of 16	₹2,90,216.25 x 16=46,43,460/-
9.	Conventional Heads	₹70,000/-
10	Total	₹46,43,460+70,000= 47,13,460/-
11.	Monthly Financial Assistance (being paid)	₹22775x12x12=₹32,79,600
12	Total compensation to be paid	₹47,13,460-32,79,600=14,33,860/-

The enhanced compensation amount be released to the appellants forthwith. The interest component as granted by the Tribunal would remain intact,

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

31.08.2018
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No