IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 22.02.2018

1.FAO No. 403 of 2016

Sandeep Singh **....... Appellant**

versus

Shamsher Singh and others **....... Respondents**

2. FAO No. 521 of 2016

Reena and others **...... Appellants**

versus

Shamsher Singh and others **....... Respondents**

3. FAO-1636-2016

National Insurance Co. Ltd. **..... Appellant**

versus

Reena and others **.... Respondents**

4. FAO-1638-2016

National Insurance Co. Ltd. **..... Appellant**

versus

Sandeep Singh and others **.... Respondents**

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

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Present: Mr.Ashit Malik, Advocate for the appellants
(in FAO Nos. 403 and 521 of 2016 and
for respondents No. 1 to 5 in FAO No. 1636 of 2016 and
for respondent No.1 in FAO No. 1638 of 2016.

Mr.A.S.Sidhu, Advocate
for respondent No.3/Insurance Company
in FAO Nos. 403 and 521 of 2016 and
for the appellant(s) in FAO Nos. 1636 and 1638 of 2016.

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of the above mentioned four appeals, out of which, appeal bearing FAO No.403 of 2016 has been filed on behalf of injured Sandeep Singh son of Om Singh and FAO No. 521 of 2016 has been filed on behalf of appellant-claimants for enhancement of compensation and two appeals bearing FAO Nos. 1636 and 1638 of 2016 have been filed by the insurance company for setting aside the award dated 23.09.2015 passed by the Motor Accidents Claims Tribunal, Sonepat. All the aforesaid appeals have arisen out of a common vehicular accident which took place on 18.07.2014. Appellant Sandeep Singh in FAO No. 403 of 2016 is injured himself whereas appellant-claimants in FAO No. 521 of 2016 are the legal heirs of Sandeep Kumar who died in this accident. All the aforementioned appeals are being disposed of by this common order as they all relate to the same accident.

First of all I would like to take up **FAO Nos. 403 of 2016 and 1638 of 2016** relating to Sandeep Singh-injujred.

Appellant Sandeep Singh son of Om Singh had received several injuries in the said accident resulting into the amputation of right leg below knee level. At the time of accident he was working as a Constable and getting a salary of Rs. 29810/- per month. As per the medical certificate issued by the Board of Doctors he had 74% permanent disability. Though he had not lost the job but the fact of the matter is that he has been awarded following amount of compensation by the MACT under different heads:-

i)	Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and misc. expenditure	Rs.1,32,582/-
ii)	Loss of future earnings on account of permanent disability	Rs. 39, 11, 036/- (annual income x 16 x 12) (3,30,324 x 16x 12)
iii)	Damages for pain, sufferings, trauma as a consequence of injuries	Rs. 1,00,000/-
	Total compensation	Rs. 41, 43, 618/-

Learned counsel for the appellant has argued that the amount of Rs. 1 lac awarded by the Tribunal on account of pain and sufferings is on the lower side and as far as his future loss of income is concerned, the appellant-injured has lost his right to promotion.

Per contra, Mr.Sidhu, learned counsel for the insurance company submits that the claimants had already availed the medical reimbursement from the department, therefore, the amount of Rs. 1,02,582/- cannot be fastened upon the insurance company.

FAO Nos. 521 and 1638 of 2016

FAO No. 521 of 2016 has been filed by the legal heirs of deceased Sandeep Kumar son of Rajbir who unfortunately died in the accident in question. At the time of death he was 27 years of age and working as a constable in Haryana Police. The claimants are seeking enhancement of compensation as the MACT had not taken the gross income of the deceased i.e. Rs. 27,923/- but has taken the net income of Rs. 25,848/- while computing compensation. The claimants are none else but the widow, minor daughter, minor son and his parents. The Tribunal assessed the monthly income of the deceased at Rs. 29,079/-and the annual dependency came to Rs. 3, 48, 948/-. The deceased was of the age of 27 years at the time of death. Thus, multiplier of 17 was applied and the compensation was assessed at Rs. 59, 32, 116/-. Besides that an amount of Rs. 1,00,000/- was awarded on account of loss of consortium, Rs. 1,00,000/- towards loss of care and guidance for minor children, Rs.25,000/- towards funeral expenses, Rs. 25,000/-towards pain and suffering and Rs.3000/-towards transportation. In total, an amount of Rs. 61,85,116/-was awarded as compensation to the claimants.

FAO No.1636 of 2016 has been filed by the insurance company on the premise that the judgment of Hon'ble Supreme Court in the case of **Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others, 2016(4) RCR(Civil) 569** has not been applied in the present cases.

Learned counsel for the insurance company has argued that as per the documentary evidence brought on record, the family is entitled to ex gratia benefit for a period of 15 years and thereafter the pension which would be 25%. Therefore, the excess amount of compensation has been awarded. Even the other allowances i.e. washing allowance, travelling allowance, diet money and other allowances were liable to be deducted over and above the income tax.

On the contrary, Mr. Malik, learned counsel for the respondents has rebutted the aforementioned argument submitting that after the benefits which have been granted under the Haryana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006 (in short 'Rules of 2006'), no doubt the amount under the aforementioned scheme is liable to be deducted only to the extent of 50% as it has come in the testimony of PW1-SI Kulveer Singh who deposed that after a period of 15 years the family of the deceased was entitled to family pension. In support of his contention he has relied upon judgment rendered by a coordinate bench of this Court in **FAO No. 5258 of 2015 decided on 30.8.2017** titled as **Oriental Insurance Co. Ltd. v. Neelam and others** wherein this Court held that pensionary benefits available to family of a deceased employee are not amenable to deduction for computing loss of dependency, thus, urges this Court that only 50% of the salary to be paid to the family under Rule 5(2) of the Harayana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006 ought to have been deducted out of assessed compensation. Therefore, there has to be deduction of 50% by which the benefit has been extended to the family of the deceased and not the entire amount.

I have heard learned counsel for the parties and have gone through the entire record with the able assistance of learned counsel. I would be taking up the case of the death of Sandeep Kumar **(FAO No. 521 of 2016).**

Sandeep Kumar, deceased admittedly was 27 years of age and was drawing gross salary of Rs 27,923/- as per salary slip whereas the learned MACT has taken the monthly income to be Rs. 25,848/- as discussed above. Now the question is whether the compensation awarded is liable to be enhanced. As per Rule 5(1)(a) of the Rules of 2006, 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 for a period of fifteen years from the date of his death if the employee at the time of his death had not attained the age of thirty five years. The aforementioned scheme has been promulgated to extend benefits of family pension. It has come on record that the family of the deceased would be getting entire pay for a period of 15 years as the financial assistance. Rule 5 of 2006 Rules *ibid* provides for the extent of financial assistance which reads as follows:-

> " *(1) On the death of any Government 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 date of 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 the 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;*
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> *(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.*
>
> *(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.*
>
> *(3) The family of a deceased Government employee who was in occupation of a Government residence would continue to retain*

the residence on payment of normal rent/license fee for a period of one year from the date of death of the employee.

(4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.

(5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance."

It has also come on record in the testimony of the witnesses that the family of the deceased would be getting 50% of the family pension. As against this, learned counsel for the insurance company has placed reliance upon a judgment rendered by this Court in **FAO No. 3143 of 2012** decided on 01.12.2017 titled as **United India Insurance Co. Ltd. vs. Jaswinder Kumar Sharma and others.**

There is merit in the argument of learned counsel for the insurance company. It is only the income tax which is liable to be deducted. The net income of the deceased was Rs. 25, 848/-. However, the Tribunal should have taken into consideration the gross income while computing compensation which is Rs. 27, 923/-. I will provide 50% increase in the salary towards future prospects, make a deduction of 1/4th towards personal expenses and adopt a multiplier of 17 to assess the loss of dependency as 6245632. I will further add to it Rs. 40,000/- for loss of consortium and Rs. 15,000/- each for loss of estate and funeral expenses, thus, the total compensation shall be Rs. 6315632/- as per the latest judgment of **National Insurance Company Ltd. V. Pranay Sethi , 2017(4) RCR(Civil) 1009.**

The compensation is reassessed as follows:-

Gross Income of the deceased per month	Rs. 27923/-
Annual income	Rs. 27923 x 12=335076
TDS deducted	Rs. 8507
Actual salary	Rs. 326569
Multiplier of 17 is applied to the actual salary	Rs. 326569 x 17= Rs. 5551673
Future prospects of 50% to be added to actual salary	Rs.5551673+ Rs.2775836= Rs. 8327509
Amount after deduction of 1/4th	Rs.8327509 x ¼ = Rs.6245632
Amount under conventional heads	Rs. 70,000/-
Total compensation	Rs. 6315632

As regards the argument of deduction of amount provided under Rule 5(2) of the Haryana Compassionate Assistance to the dependents of the Deceased Government Employees Rules, 2006, I am not in agreement with the view taken by Coordinate Bench of this Court in the judgment referred to above.

In view of the aforementioned Rules, the case of the deceased- falls in clause (a) of Rule 5(1), meaning thereby, the claimants shall be entitled to the pay and allowances that were last drawn by the deceased employee in the normal course without raising a specific claim for a period of 15 years. Reena, widow of deceased, when appeared in the witness box as PW2 admitted in cross examination that she was getting Rs. 20,227/- per month from Haryana Police as monthly financial assistance. Therefore, the claimants shall receive a sum of Rs. 3640860/-(20227 x 12 x 15) as financial assistance under the aforementioned Rules, which is amenable for deduction from loss of dependency. As regards the argument of deduction of family pension, as per clause 2 of Rule 5(1) of the 2006 Rules, the family shall be eligible to receive family pension as per the normal rules only after the period during which she received the financial assistance, as above, is completed. Therefore, there is no virtue of deducting merely 50% of the salary as computed towards financial assistance from the loss of dependency while assuming that had the Rules of 2006 been not in existence, the family would have been entitled to pension to the extent of 50% in the last drawn pay. In my humble view, it is not the correct appreciation of law. The family shall be eligible to receive family pension only after the period during which it receives the financial assistance as enumerated in Rule 5(1) of the 2006 Rules. Thus, the amount to be deducted would come to Rs. 3640860/-(Rs. 20227 x 15 x12). After deductions the compensation would come to (6315632- 3640860)= Rs. 2674772/-. The insurance company is liable to recover the excess amount from the claimants in accordance with law. The appeal filed by the legal heirs of deceased Sandeep Kumar i.e. FAO No. 521 of 2016 is dismissed and that filed by the insurance company i.e. FAO No. 1636 of 2016 is allowed. The statutory amount of Rs. 25,000/- deposited by the insurance company in FAO NO. 1636 of 2016 shall be refunded to the insurance company .in accordance with law.

Now coming to the appeal filed by injured Sandeep Singh i.e. FAO No. 403 of 2016 and the one by the insurance company i.e. FAO No. 1638 of 2016. In my opinion the compensation awarded by the Tribunal in case of injured Sandeep Singh is just and proper except the amount awarded under the head pain and sufferings which is liable to be increased. It has also come on record that the injured has lost his right of future prospects as he has suffered amputation of his right leg. He being a young person was not only entitled to amenities of life, as would have served in a better way had his leg not been amputated. This Court thus grants another sum of Rs. 2

lacs under the head pain and sufferings and loss of future prospects. The enhanced amount of compensation shall entail interest at the rate of 6% p.a. from the date of filing of the appeal till realisation . Thus, FAO No. 403 of 2016 is partly allowed and the appeal filed by the insurance company i.e. FAO No. 1638 of 2016 is dismissed. The statutory amount of Rs. 25,000/- deposited by the insurance company in FAO No. 1638 of 2016 shall be transferred to the Tribunal for onward disbursement to the claimants.

(AMIT RAWAL)
JUDGE

22.02.2018
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No