IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC No.20-CII of 2018 in/and
FAO-7402-2016 (O&M)
Date of decision: 03.07.2018

CHOLAMANDALAM MS GENERAL INSURANCE CO LTD
...Appellant

Versus

PROMILA DEVI & ORS
...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Vandana Malhotra, Advocate
for the appellant.

Mr. Sagar Aggarwal, Advocate
for the claimants.

Mr. Chanderkant Thakur, Advocate
for respondents No.5 and 6.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 08.08.2016 passed by the Motor Accidents Claims Tribunal, Kaithal whereby compensation has been allowed on account of death of Naresh Kumar in a motor vehicular accident that took place on 02.10.2015.

Counsel for the appellant-insurance company would inform that the appeal has been preferred to assail quantum of compensation assessed by the Tribunal. It is argued that family of the deceased shall be entitled to financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006') and the same is amenable to deduction out of compensation assessed, in the light of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569.** It is further argued that as father of the deceased was not dependent on his earning, admissible deduction for personal expenses should be 1/3rd in place of 1/4th. Income tax payable by the deceased is liable to be deducted.

Counsel representing the claimants, on the contrary, would urge that the Tribunal has rightly allowed deduction of 1/4th qua personal expenses of the deceased. Further argued that compensation is liable to be assessed by taking into account gross salary of Rs.28,445/-, detailed in the salary certificate Ex.P1. Counsel would further argue that the claimants are entitled to future prospects @ 50%. He has fairly conceded that medical expenses have already been reimbursed.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, Naresh Kumar deceased was working as Constable with Haryana Police and was posted as such at P.P. Manglora, P.S. Madhuban, District Karnal at the time of death. He was drawing gross salary of Rs.28,445/- as per salary certificate Ex.P1. The deceased was born on 13.06.1988, thus, 27 years old at the time of occurrence. Perusal of the salary certificate Ex.P1 would reveal that the entire salary is to be taken into account for computing loss of dependency though of course liability to pay income tax shall be deducted therefrom. The annual income of the deceased is Rs.3,41,340/- (Rs.28,445 x 12). After deducting income tax of Rs.9134/-, annual salary available for computing loss of dependency comes to Rs.3,32,206/-. Claimants shall be entitled to benefit of future prospects @ 50% in the light of judgments of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** and **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. Multiplier of 17 adopted by the Tribunal is correct and affirmed.

The application for compensation has been filed by the widow, minor child and parents of deceased Naresh Kumar. It has not been proved that Raj Singh, father of the deceased was dependent upon income of Naresh Kumar. In the given scenario, deduction for personal expenses would be 1/3rd. In this manner, loss of dependency comes to Rs.56,47,502/- [(3,32,206 x 17) + (50% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation comes to Rs.57,17,502/-.

As the deceased was an employee of State of Haryana and died at the age of 27 years, family of the deceased shall be entitled to financial assistance under the Rules of 2006 for a period of 15 years. Accordingly, an amount of Rs.51,20,100/- (Rs.28,445 x 12 x 15) shall be deducted from the compensation assessed, in the light of judgment of Hon'ble the Supreme Court **Shashi Sharma's case (supra)**. The net amount payable to the claimants comes to Rs.5,97,402/- (57,17,502 – 51,20,100). Accordingly, compensation awarded by the Tribunal is reduced to the extent of Rs.34,02,598/- (Rs.40,00,000 – 5,97,402). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an application before the Tribunal.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed whereas the cross-objections filed by the claimants are dismissed.

All other terms and conditions of the award shall remain in tact.

(REKHA MITTAL)
JUDGE

03.07.2018
ashok

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No