IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 7989 of 2016
Date of decision:- 22.01.2018

Smt. Papita and others ...Appellants

Versus

Saleem Bhatti and others ...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashish Yadav, Advocate ,
for the appellants.

Mr. Rajneesh Malhotra, Advocate and
Ms. Vandana Malhotra, Advocate,
for respondent No. 3-Insurance Company.

RITU BAHRI J. (Oral)

CM No. 26808-CII of 2016

For the reasons mentioned in the application, same are allowed and delay of 47 days in filing the present appeal is condoned.

Accordingly, application stands disposed of.

Main Case:

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') vide award dated 08.04.2016, on account of death of Rajpal in a motor vehicular accident which took place on 26.07.2015.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 26.07.2015, Sh. Mahender Singh son of Sh. Shiv Chand, was coming from village Jadra and going to his house via Pataudi by Vehicle No. HR-26-BV-6680. At about 9.30 pm when he reached between Bhora kalan and Uncha Majra on

Pataudi-Bilaspur road, a motorcycle No. HR-26AN -1424 was driven ahead of his vehicle on correct left side of the road at a very moderate speed and observing all traffic rules, in the meantime, a truck bearing registration no. PB-07-Y-7525 came from Bilaspur side at a very high speed and in a rash and negligent manner on wrong side of road and hit motorcycle which was going ahead ofSh.Maherndер Singh. Due to accident, motorcycle and driver of motorcycle fell down on the spot and sustained grievous injuries and become unconscious. Thereafter, Sh. Maherndер Singh alongwith other passerby called ambulance and took injured to Rokland Hospital, Manesar, where after checking, declared him brought dead. In this regard FIR No. 293 dated 27.07.2015 under Sections 279, 304-A and 427 of IPC was registered against respondent No. 1 at Police Station Bilaspur, Gurgaon.

Consequently, claimants-appellants 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 negligent driving of offending vehicle by respondent No.1. The deceased was 38 years of age at the time of accident/death and he was Army Pensioner as well as Proprietor of Kasturi Cloth House, Nohta chowk, near Makkar Tent house, Pataudi, District Gurgaon, was earning Rs.3,99,796/- per annum.

This finding was rightly given on the basis of FIR, and others documentary evidence led by the claimants. Rajpal (since deceased) has four dependent including wife, minor son and appellant

Nos. 3 and 4 are parents of deceased Sh.Rajpal Singh. As per income tax returns Ex. P15 for the Assessment Year 2014-15, Ex. P16 for the assessment year 2015-16 it is clear that deceased was earning Rs.3,99796/- annually and after deducting Rs.4415/- as income tax from the said income, his net annual income comes to Rs. 3,95,383/-. As per the law laid down in ***Sarla Verma and others vs. Delhi TransportCorporation and another*** , 2009 (3) RCR (Civil) Page 77, in case of deceased's age of 38 years, multiplier of 15 would be applicable, to calculate the amount of compensation payable to the claimants No.1,2 and 3 being widow, minor son and mother of the deceased. However, in the absence of any proof that claimant No. 4 Sh. Dharam Singh was dependent upon deceased, being father, this Tribunal is not inclined to give any compensation to him. Hence, Tribunal took the income of deceased is Rs.3,95,383/- per annum out of which one third deduction (as in case in hand dependents are three in number) reduces the annual income to Rs. 2,63,589/-(Rs.3,95,383/- - Rs. 1,31,794/- = Rs.2,63,589/-). Accordingly, there remains total annual income of the deceased as Rs.2,63,589/-. After applying multiplier compensation amount comes to Rs.39,53,835/-. In addition to this amount, Rs. 20,000/- awarded towards loss of estate, Rs. 20,000/- towards funeral expenses and Rs. 20,000/- awarded towards love and affection and claimant no. 1, being widow is awarded another amount of Rs.25000/- on account of consortium. Hence, the Tribunal awarded an amount of Rs. 40,13,835/- to all the claimants and claimant no. 1 shall also get Rs.25,000/- as consortium. However, Claim of the claimant No.4, father of deceased, is dismissed.

Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

REASSESSED COMPENSATION

In the present appeal Learned Counsel for the insurance company argued that family pension should be deducted while reassessing the amount of compensation but on the other hand learned counsel for the appellants, has referred the Judgment of Hon'ble Supreme Court in case titled as ***Reliance General Insurance Co. Ltd. Versus Shashi Sharma and Ors. 2016(4) RCR (Civil) 569*** whereby it has been held that :

> *'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, *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 deceased Government employee to claim similar amount from the tort-feasor 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 or the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances". That was last draw by the deceased Government employee in the normal course. This is not to say that the amount of payment receivable by the dependents or 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.*

I have heard learned counsel for the parties and perused the case file.

Hence, following the ratio of the Judgment ***Reliance General Insurance Co. Ltd. Versus Shashi Sharma and Ors. 2016(4) RCR (Civil) 569 (Supra)*** family pension cannot be deducted while assessing the compensation.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed only by adding 40% future prospects which was not awarded by Tribunal (compensation in the heads of conventional and consortium would remained same as per the Tribunal), in view of the judgments passed by Hon'ble the Supreme Court in ***National Insurance Company Limited Vs.Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017)*** and ***Sarla Verma and others vs. Delhi TransportCorporation and another*** , 2009 (3) RCR (Civil) Page 77, as under:-

Sr. No.	***Heads***	***Calculations***
(i)	Salary	Rs. 3,95,383/-
(ii)	40% added in (i) towards future prospects	Rs.3,95,383 + 158,153=Rs.5,53,536 /-
(iii)	1/3rd deducting from (ii) towards personal expenses	Rs.5,53,536 -Rs. 1,84,512= Rs.3,69,024/-
(iv)	Multiplier applied	Rs.3,69,024X15= 55,35,360/-
(v)	Compensation towards conventional head i.e., on account of loss of estate, funeral expenses, non-pecuniary damages	Rs. 60,000/-

Sr. No.	***Heads***	***Calculations***
(vi)	Loss of consortium	Rs.25,000/-
	Total Compensation awarded (iv)+ (vi)	Rs. 55,35,360 + Rs. 60,000 +Rs.25,000 =Rs. 56,20,360/-
	Enhanced amount of compensation	**Rs.56,20,360 -40,38,835=Rs.15,81,525/-**

The enhanced amount of compensation of **Rs.15,81,525 /-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% 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 "***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others",*** **2015(1) SCC 539**.

Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

22.01.2018 **(RITU BAHRI)**
Riya Grover ***JUDGE***

Whether speaking/reasoned Yes
Whether reportable No