**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.1268 of 2018(O&M)

Date of decision: 1.3.2018

Liberty Videocon General Insurance Co. Ltd. …..Appellant

VERSUS

Smt. Mausam and others .....Respondents

*****

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

*****

REKHA MITTAL, J.

CM No.4444-CII of 2018

Prayer in this application is for condoning delay of 11 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Dinesh Jhalani, Manager (Legal), Liberty Videocon General Insurance Co. Ltd., the application is allowed. Delay of 11 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.1268 of 2018

The present appeal directs challenge against award dated 31.10.2017 passed by the Motor Accidents Claims Tribunal, Sonepat (in short 'the Tribunal') whereby compensation has been awarded on account of death of Virender Singh in a motor vehicular accident that took place on 19.01.2017.

The Tribunal has awarded compensation of Rs.18,23,627/- detailed hereunder:-

Loss of dependency	Rs.16,98,627/-
Loss of consortium to the widow	Rs.1,00,000/-
Expenses on transportation and funeral	Rs.25,000/-

Counsel for the appellant-insurance company would argue that the deceased was an employee of Haryana Government and his family would be entitled to benefit of Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (in short 'the Rules of 2006'). It is argued that amount payable to family of the deceased under the Rules of 2006 is liable to be deducted in the light of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569.**

Another submission made by counsel is that as the vehicle was being plied without a valid route permit, insurance company is entitled to be exonerated of liability to pay compensation or in the alternative given recovery right against the insured after satisfying claim of the victim family.

Before adverting to the submissions with regard to quantum of compensation assessed by the Tribunal, I would like to deal with the issue of route permit. As per the settled position in law, non-possessing of a route permit or deviation therefrom neither constitutes violation of the terms and conditions of the policy nor a defence in favour of the insurer under Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). That being so, contention raised by counsel for the appellant in this regard is mis-conceived and merits outright rejection.

This brings the Court to quantum of compensation assessed by the Tribunal. Perusal of para 27 of the award pertaining to assessment of loss of dependency does not give a clear picture. As a matter of fact, loss of dependency was required to be computed by assessing compensation payable under the Act and thereafter deducting amount paid to victim family under the Rules of 2006 in the light of judgment in **Shashi Sharma's case** (supra).

The deceased was working as Crane Helper in Haryana Police at a salary of Rs.32,318/- per month. He was born on 12.12.1967 and died on 19.01.2017, accordingly, he was slightly more than 49 years of age. The application for compensation has been filed by the widow, three sons, married daughter and mother of deceased Virender Singh. The married daughter cannot claim compensation qua loss of dependency. Keeping in view the number of dependents, deduction for personal expenses would be $1/4^{th}$. Admissible multiplier in the age bracket of 46-50 is 13. The annual income of the deceased at Rs.32,318/- p.m. is Rs. 3,87,816/-. After deducting liability to pay income tax of Rs. 13,782/-, net income for computing loss of dependency comes to Rs.3,74,034/-. The claimants shall be entitled to increase in income for future prospects at the rate of 30% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**. In this manner, loss of dependency comes to Rs.47,40,881/-

[Rs.48,62,442/- (Rs.3,74,034/- x 13) + Rs.14,58,733/- (30% towards future prospects) - Rs.15,80,294/- (1/4th deduction towards personal expenses)].

The claimants shall be entitled to following compensation under conventional heads in the light of judgment in **Pranay Sethi's case** (supra):-

Loss of consortium to the widow	Rs.40,000/-
Funeral expenses/last rites	Rs.15,000/-
Loss of estate	Rs.15,000/-

The respondents examined ASI Satish Chander RW-3. As per his statement, department is paying salary at Rs.31,388/- per month to Mausam Kumari and salary shall be paid up to the age of retirement of deceased Virender Singh. Salary slip of Mosam Kumari is marked as Ex.R8. No doubt, ASI Satish Chander has deposed that salary of Rs.31,388/- shall be paid upto age of retirement of deceased Virender Singh and retirement age of class IV employees is 60 years but statement made by the witness is contrary to Rule 5 of the Rules of 2006. A relevant extract from Rule 5, germane to the controversy, reads as follows:-

> "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) xx xx xx
>
> (b)xx xx xx
>
> (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."

As the deceased in the instant case was more than 48 years of age, to be precise more than 49 years, family of the deceased would be entitled to benefit of Rules of 2006 only for a period of 7 years. The amount of Rs.31,388/- for a period of 7 years comes to Rs. 26,36,592/-.

The question that now invites consideration of this Court is whether the entire amount available to family of the deceased under the Rules of 2006 is amenable to deduction. 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 extending assistance to family of a 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, the pensionary benefits available to family of a deceased employee are not amenable for deduction for computing loss of dependency. Under the circumstances, in case deduction to the extent of Rs.26,36,592/- is allowed, the Rules of 2006 would operate prejudicially against the claimants causing loss of pensionary benefits to which family of 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 the given scenario, only 50% of the amount available to family of the deceased under the Rules of 2006 is amenable to deduction.

In view of the above, total compensation payable to the claimants, after deducting Rs.13,18,296/- comes to Rs.34,92,585/- and the additional amount is Rs.16,68,958/- (Rs.34,92,585/- - Rs.18,23,627/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to widow of the deceased. The same shall be invested in a Fixed Deposit for a period of three years.

The appeal is disposed of in the aforesaid terms. A copy of the judgment be sent to the claimants and the Tribunal concerned.

MARCH 1, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no