

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-11637-C-2018 in /and
FAO-2986-2018 (O&M)
Date of Decision : 30.07.2018

New India Assurance Co. Ltd.

..... Appellant

Versus

Sarda Rani and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. R.C. Kapoor, Advocate
for the applicant-appellant.

AJAY TEWARI, J. (Oral)

CM-11637-CII-2018

For the reasons recorded, the application is allowed. Delay of 16 days in filing the appeal is condoned.

FAO-2986-2018 (O&M)

This appeal has been filed against the award of the Motor Accident Claims Tribunal, Ambala whereby a sum of Rs.19,00,000/- has been awarded to the respondent No.1 on account of death of her husband in an accident (who was a retired government servant). Since very limited issue has been raised the detailed reference to the facts is not required.

Counsel for the appellant has argued that as per the claimants, the deceased was coming from Saha side on scooter and when he reached the chowk and took a right turn he was hit by the offending vehicle.

Counsel for the appellant has argued that it clearly shows that there must be some contributory negligence.

In my opinion, there is no warrant for the proposition that in every case where the person is taking a right turn on a chowk and is hit by a vehicle, there has to be a contributory negligence. It has come on record that the accident took place on kacha portion of the road which also shows that the deceased had crossed the road. In the circumstances, the argument regarding contributory negligence has to be rejected.

The second argument raised by the counsel is that the respondent No.1 was getting family pension and that should have been deducted in view of the judgment of the Supreme Court in ***Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others, 2016 (4) RCR (Civil) 569***. In that case their Lordships have held that since the Haryana Government had made a policy whereby the total salary of the deceased was paid for a certain number of years and that amount of salary would have to be deducted from the compensation amount. It is the contention of the counsel that likewise the family pension which the respondent No.1 was receiving should also be deducted from the income of the deceased. To support his contention he has also relied upon a judgment of this Court in FAO No.10228 of 2014 and other connected cases titled as ***Charanjit Singh vs. Harish Kumar Sachdeva and others, decided on 30.01.2018***, wherein this Court had extended the principle which was applied by the Supreme Court in Shashi Sharma's case (supra) and held that the family pension which was being given to the widow of the pensioner would have to be deducted.

situation as regards the family pension which is awarded to a serving employee who may die in an accident. He has fairly stated that that would not be deductible. In my considered opinion, this is the crux of the matter. There cannot be any distinction between how a family pension is to be treated only on the ground that a person is in service or has retired. As a matter of fact, in Shashi Sharma's case (supra) the Supreme Court held as follows:-

“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).”

In the circumstances, this argument is also rejected.

The third argument raised by the counsel is that in this case the Tribunal erred in deducting 1/3rd of the income as personal expenses. As per him, though the deceased left behind five legal representatives yet his four children were married and well settled and consequently could not have been held to be dependent on him and the only person thus dependent upon him was respondent No.1 and deduction should have been made of 50% in these circumstances. To support his contention, he has relied upon the

judgment of this Court in the matter of ***Harpal Kaur and others vs. Sita***

Ram and others, (2017-4) 188 PLR 368.

The Tribunal had considered the issue that the four children were not dependent upon deceased and had held that even though the children were married yet the deceased had some social obligations towards his children. The Tribunal did not reduce the deduction to 1/4th which would have been the case if all the five legal representatives were considered as dependents but it allowed the deduction of 1/3rd. In the totality of circumstances, I am not persuaded that the reason given by the Tribunal for not deducting 1/2 of the income is perverse.

In the circumstances, the appeal is dismissed.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

July 30, 2018
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No