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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 260/2018 & CM. Nos. 18907/2018 and 18908/2018

KARAMJEET KAUR & ORS Appellants

Through: Ms. Aruna Mehta, Adv.

versus

UNION OF INDIA Respondent

Through: Mr. Jagjit Singh & Mr. Preet Singh,
Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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06.12.2018

1. Seeking exception to an order dated 03.01.2018 passed in W.P.(C) 7917/2013, this appeal has been filed under Clause 10 of the Letters Patent. The appeal in question was filed by the petitioners claiming compensation on account of accidental death of Late Sh. Rich Pal Singh who was working in Northern Railways as a Senior Loco Inspector. It is stated that on 03.10.2007 at 3:15 hours when said Late Sh. Rich Pal Singh was on duty, he suffered injuries due to explosion in the Boiler of a Steam Engine. He suffered vital burn injuries and died. He was survived by his widow and two children who invoked the jurisdiction of this Court.

2. The writ petition was filed after six years of the incident that also when the Railways paid compensation under the Employees' Compensation Act, 1923 to the tune of Rs.3,86,757/- which included interest, an *ex-gratia* of Rs.6,13,243/- i.e. total compensation of Rs.10 lakhs was granted under

these provisions. That apart, the writ court found that the Railways had paid various amounts amounting to Rs.10,36,773/- apart from the sum of Rs.10,00,000/- as compensation as is detailed in para 4 of the order passed by the writ court. Railways gave compassionate appointment to the petitioner No.1 (appellant No.1 herein), who is now working as a Senior Clerk and is earning wages by employment. Placing reliance on following judgments, learned writ court dismissed the writ petition:

- (i) ***Helen C. Rebello v. Maharashtra State Road Transport Corp.,*** (1991) 1 SCC 90;
- (ii) ***United India Insurance Co. Ltd. V. Patricia Jean Mahajan,*** (2002) 6 SCC 281; and
- (iii) ***Reliance General Insurance Company Ltd. v. Shashi Sharma,*** (2016) 9 SCC 627.

3. Learned writ court in paras 5, 6 and 7 of the impugned judgment observed as under:

“5. Learned counsel for the petitioner submits that the compensation deposited by the respondent with the Commissioner, Employees’ Compensation was withdrawn by the petitioner without prejudice to their right to claim further compensation. However, no document has been placed on record to show that the amount was received without prejudice. It is further submitted that the withdrawal of the compensation under the Employee’s Compensation Act does not bar the petitioners for claiming further compensation. With respect to the ex-gratia amount of Rs.6,13,243/- paid by the respondent, learned counsel for the petitioner admits that receipt of the ex-gratia amount and submits that the payment of the ex-gratia amount also does not affect the petitioners right to claim further compensation. Learned counsel for the petitioners further admits the receipt of dues to the tune of Rs.20,36,773/-

as well as the compassionate appointment given by the Railways to petitioner No.1. With respect to the plea of delay and laches, it is submitted that the petitioners No.2 and 3 were minors and, therefore, the petition is not barred by delay and laches.

6. In the present case, the petitioners have received amount of Rs.10,00,000/- in consequence of the accidental death of the deceased in the accident dated 03rd October, 2007. This Court is of the view that the petitioners have received reasonable compensation of Rs.10,00,000/- from the respondent (Rs.3,86,757/- by way of compensation under the Employee's Compensation Act and Rs.6,13,243/- as ex-gratia payment) and they are not entitled to any further compensation in this writ petition. The petitioner's contention that the ex-gratia amount paid by the respondent cannot be treated/adjusted against the compensation is rejected. The law in this regard is well settled that the pecuniary advantage received by them as a consequence of the accidental death is treated as compensation. The petitioners claim for further compensation is not maintainable. Reference be made to **Helen C. Rebello v. Maharashtra State Road Transport Corp.**, (1999)1 SCC 90, **United India Insurance Co. Ltd. v. Patricia Jean Mahajan**, (2002) 6 SCC 281 and **Reliance General Insurance Company Ltd. v. Shashi Sharma**, (2016) 9 SCC 627. This Court also notes that the compassionate appointment has been given by the Railways to the petitioner who is now promoted to the rank of a Senior Clerk.

7. There is no failure of duty on the part of the respondent in view of the employee's compensation Rs.3,86,757/- voluntarily deposited by the Railways with the Commissioner, Employees' Compensation as well as the payment of an ex-gratia amount of Rs.6,13,243/- by the Railways to the petitioners and the compassionate appointment given by Railways to petitioner No.1. There is no merit in this writ petition which is hereby dismissed."

4. In this appeal reliance is placed on a judgment in the case of ***Bhakra Beas Management Board vs. Kanta Aggarwal*** 2008 AIR (SC) 3118 to say that the amount received in this manner cannot be deducted from the compensation payable under the Motor Vehicles Act. On the contrary, respondents relied upon a judgment in the case of ***Reliance General Insurance Company Ltd. v. Shashi Sharma***, (2016) 9 SCC 627 to say that pecuniary advantage from whatever source received must correlate to the injury or death arising from the said accident and placing reliance on the judgment in ***Helen C. Robello*** (*supra*) relied upon by the learned writ court, the prayer made is that the appeal is not maintainable.

5. Having bestowed our anxious consideration on various aspects of the matter and keeping in view the judgment in the case of ***Reliance Industries*** (*supra*) and the reasons that are indicated by the learned writ court as detailed hereinabove, we see no reason to make any indulgence in the matter, particularly, when the petitioner invoked the jurisdiction of this Court after he received all the amount as are indicated hereinabove.

6. With the aforesaid observations, the appeal stands dismissed. All the pending applications also stand disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

DECEMBER 06, 2018/ns