IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 4888 of 2009 (O&M)
DECIDED ON: May 03, 2019

KELA DEVI AND OTHERS

APPELLANTS

VERSUS

KRISHAN AND OTHERS

RESPONDENTS

AND

2. FAO No. 5010 of 2009 (O&M)

UNITED INDIA INSURANCE CO. LTD.

.....APPELLANT

VERSUS

KELA DEVI AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Tara Chand Danawal, Advocate
for the appellants in FAO No. 4888 of 2009 and
for respondents No.1 to 4 in FAO No. 5010 of 2009.

Mr. Sanjiv Pabbi, Advocate
for the appellant in FAO No. 5010 of 2009 and
for respondent No.3 in FAO No. 4888 of 2009.

None for the owner and driver

AVNEESH JHINGAN, J (Oral):

The award dated 12.06.2009 passed by the Motor Accident Claims Tribunal, Bhiwani (for brevity 'the Tribunal') passed in MACT case

No. 39 of 2008 has been assailed by filing two separate appeals. One appeal has been filed by the claimants and another by the insurer of bus bearing registration No. HR-61-5079 (hereinafter referred to as the 'offending vehicle'). As the appeals arise out of same accident and one award, these are being disposed of vide common order.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The respondents before the Tribunal were driver, owner and insurer (i.e. United India Insurance Company Ltd.) of the offending vehicle.

The factum of the accident, rash and negligent driving of the offending vehicle and liability to pay the compensation have not been disputed by the parties.

In the claim proceedings, it was pleaded that the deceased was 50 years old and was working as a Teacher in Govt. High School Bhangarh and was getting salary of ₹ 16,961/- per month; 1/3rd deduction for self-expenses was made and multiplier of '12' was applied. The Tribunal awarded compensation of ₹11,57,000/- alongwith interest @7% per annum. The amount awarded included ₹5,000/- for last rites. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

Learned counsel for the insurer contends that the deceased was governed by the *Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006* [hereinafter referred to as 'Rules'] and the financial assistance received under the Rules must be deducted.

Learned counsel for the claimants contends that the amount of compensation has not been calculated as per the decisions of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21*** and ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.***

Heard learned counsel for the parties and perused the record.

There is no challenge to the fact that family of the deceased got assistance under the Rules.

The Supreme Court in ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others JT 2016 (12) SC 409.*** held that the amount received under the Rules has to be deducted. Operational part of the decision is reproduced as under:-

> *"22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. 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 dependants / 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 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 the deceased Government*

employee to claim similar amount from the tortfeasor 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 of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of 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, 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)."

While calculating compensation, the courts are duty bound to award just and equitable compensation. The deceased was a salaried employee and the calculation shall be made after deducting income tax from the gross salary.

Reliance in this regard is placed on the decision of Supreme Court in case of ***Manasvi Jain Vs. Delhi Transport Corporation, (2014)3***

SCC 22, wherein it has been held as under :-

> *"12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased."*

In consonance with the decision of the Supreme Court, firstly compensation is to be calculated and thereafter financial assistance received under the Rules is to be deducted.

To decide the issue in controversy, certain factual aspects need to be gone into. Without expressing any opinion on the merits of the case, the matter with regard to the quantum of compensation is remitted back to the Tribunal to decide afresh in accordance with law after providing opportunity to the insurer and the claimants, to adduce evidence if desired.

The parties are directed to appear before the Tribunal on 09.07.2019.

Both the appeals are disposed of.

(AVNEESH JHINGAN)
JUDGE

MAY 03, 2019
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Whether speaking/reasoned ***Yes***
Whether reportable ***No***