IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 269 of 2014 (O&M)
DECIDED ON: May 16, 2019

KASHISH AND OTHERS

APPELLANTS

VERSUS

MOHD. SALEEM AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ishan Cooner, Advocate for
Mr. J.S. Cooner, Advocate
for the appellants.

Mr. Sandeep Suri, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

Aggrieved of the award dated 13.09.2013 passed by the Motor Accident Claims Tribunal, Ambala (for brevity 'the Tribunal') in MACT case No. 69 of 2012, the present appeal has been filed by the legal representatives of Rani Sharma.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 05.05.2012. The accident proved fatal for Rani Sharma. The accident was result of rash and negligent driving of the driver of the truck bearing registration No. JK-02-U-1398 (hereinafter referred to as 'offending vehicle'). FIR No. 169, dated 05.05.2012 was registered at Police Station Baldev Nagar, Ambala. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

The Tribunal awarded compensation of ₹14,59,000/- alongwith interest @ 7.5% per annum. 1/3rd deduction for self-expenses was made and multiplier of '9' was applied. The amount awarded included ₹5000/- for loss of consortium and ₹4500/- each for loss of estate and for funeral expenses.

The claimants were able to prove that the deceased was 53 years old at the time of accident and was a Haryana Government employee being Hindi Teacher. She was drawing monthly salary of ₹40,381/-.

The legal heirs of the deceased got financial assistance under the *Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006* (hereinafter referred to as 'Rules') to nullify the effect, the tribunal deducted half of the salary while awarding the compensation.

Learned counsel for the claimants contends that the Tribunal erred in considering the half salary of the deceased for calculating the compensation. His grievance is that no future prospects have been awarded and multiplier of '9' has wrongly been applied instead of '11'. He further argues that the amounts under the conventional heads are on lower side.

Learned counsel for the insurer argues 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 Ltd. vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others JT 2016 (12) SC 409.***

Heard learned counsel for the parties and perused the record.

The method adopted by the Tribunal for calculating the compensation cannot be sustained.

Reliance in this regard is placed on the decision of the Supreme Court in ***Shashi Sharma's*** case (supra) wherein, it has been 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)."

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 of quantum of compensation, 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 30.07.2019.

The appeals is disposed of.

(AVNEESH JHINGAN)
JUDGE

MAY 16, 2019
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Whether speaking/reasoned ***Yes***
Whether reportable ***No***