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

XOBJC-170-CII of 2016 (O&M) in/and
FAO No.4367 of 2015 (O&M)
Date of decision: 16.12.2019

Reliance General Insurance Co. Ltd. ... Appellant

Versus

Satbir and others ... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. RK Bashamboo, Advocate
for the insurance company.

Ms. Amrita Nagpal, Advocate
for respondents No.1 and 2/cross objectors.

Ms. Seema Pasricha, Advocate
for respondents No.3 and 4.

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**REKHA MITTAL, J. (Oral)**

This order will dispose of FAO No.4367 of 2015 and cross objections No.170-CII of 2016 as these have emerged out of the same award dated 06.04.2015 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Sombir in a motor vehicular accident that took place on 29.04.2013.

FAO No.4367 of 2015 has been filed by Reliance General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the cross objections have been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed on the question of quantum of compensation and liability of the insurance company on the issue of permit and driving licence.

The Tribunal awarded Rs.23,59,088/-, detailed hereunder:-

| | |
|---|---|
| Monthly income of the deceased | Rs.13,791/- |
| Addition in income for future prospects | 50% |
| Multiplier | 18 |
| Deduction for personal expenses | 50% |
| Loss of dependency | Rs.22,34,088/- |
| Expenses on funeral | Rs.25,000/- |
| Loss of love and affection | Rs.1,00,000/- |

Counsel for the insurance company would argue that as the deceased was an employee of Haryana Government, financial assistance available to family of the deceased under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006') is liable to be deducted out of compensation found payable to the claimants. In this context, reference has been made to judgment of Hon'ble the Surpreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569**.

With regard to violation of terms and conditions of policy by the insured, it is argued that offending vehicle is a school bus and the same was plied without a valid permit. Counsel would argue that even if the offending vehicle was a new vehicle, it could not be brought at a public place without having permit in compliance with Section 66 of the Motor Vehicles Act, 1988 (in short 'the Act'). The driving licence allegedly issued by an authority at Nagaland was not valid.

Counsel for respondents No.1 and 2/cross objectors, on the contrary, would argue that adequate compensation may be allowed to bring it in confirmity with principle of just and reasonable compensation laid down in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**.

Indisputably, the deceased was an employee of Haryana Government in Police Department. His gross pay was Rs.15,361/- but Tribunal assessed his income at Rs.13,791/- per month by ignoring medical allowance Rs.500, conveyance allowance Rs.120/-, ration allowance Rs.840/- and kit maintenance allowance Rs.100/-. The claimants cannot be denied benefit of first three allowances for assessing loss of dependency. Accordingly, monthly income of the deceased would be taken at Rs.15,261/- per month. The other criteria followed by the Tribunal with regard to addition in income for future prospects, multiplier and deduction for personal expenses is correct and affirmed. In this manner, loss of dependency is calculated at Rs.24,72,282/- [(15,261 x 12 x 18) + (50% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

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|---|---|
| 1. Expenses on last rites | Rs.15,000/- |
| 2. Loss of estate | Rs.15,000/- |

Total compensation is Rs.25,02,282/-.

The claimants examined ASI Naresh Kumar, Pay Clerk 5th Battalion, HAP Madhuban PW2 to prove employment and income of the deceased. The Tribunal, in para 27 of the award, had noticed that parents of deceased are getting financial assistance to the tune of Rs.14,191/- per month as deposed by PW2 and admitted by Satbir-claimant No.1 examined as PW1. It has also been proved on record that in view of age of the deceased, benefit of financial assistance would be available for a period of 15 years. Counsel for respondents No.1 and 2/cross objectors, on instructions, would inform that as the deceased joined service in the year 2012, the same was not pensionable. In the given circumstances, the entire amount of financial assistance paid to the claimants shall be amenable to deduction. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Shashi Sharma's case (supra)**. The amount is calculated at Rs.25,54,380/- (14,191 x 12 x 15). Since amount of financial assistance is more than compensation found payable to the claimants, they shall not be entitle to any compensation. As such, findings of the Tribunal with regard to entitlement of respondents/claimants to get compensation of Rs.23,59,088/- are set aside. As a natural corollary, the application for grant of compensation stands dismissed.

Since the claimants are not entitle to any compensation, adverting to the submissions made by counsel for the insurance company on the question of driving licence and permit would be an exercise in futility, at the cost of making the judgment lengthy.

In view of what has been discussed hereinbefore, the appeal is allowed. Award passed by the Tribunal with regard to liability to pay compensation to the tune of Rs.23,59,088/- is set aside. The insurance company shall be at liberty to recover the compensation, if already paid, by filing an appropriate application before the Tribunal. As a natural corollary, cross objections filed by the claimants stand disposed of.

16.12.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No