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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.4459 of 2015 (O&M)
Date of Decision : 03.04.2019

United India Insurance Company Ltd.

Appellant

Versus

Sushma Rani and others

Respondents

FAO No.6216 of 2015

Sushma Rani and others

Appellants

Versus

Mahi Pal and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ram Avtar, Advocate
for the appellant [in FAO No.4459 of 2015]
for respondent No.3 [in FAO No.6216 of 2015].

Mr. Rajesh K. Kataria, Advocate
for the appellants [in FAO No.6216 of 2015]
for respondents No.1 to 4 [in FAO No.4459 of 2015].

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AVNEESH JHINGAN, J (Oral):

The award dated 20.04.2015 passed by the Motor Accident Claims Tribunal, Kaithal [for brevity 'the Tribunal'], in MACT Case No.70 of 2014, has been assailed by filing two cross-appeals. One appeal has been filed by the insurer of Car bearing registration No. HR-32F-9611 [hereinafter referred to as 'offending vehicle'] and another by legal heirs of Ajay Kumar (deceased).

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

The brief facts emanating from the record are that on 15.06.2014, Ajay Kumar, Lahri Singh and Suresh Kumar were travelling in a Car bearing registration No. HR-40D-7155 [hereinafter referred to as 'Car']. On their way, the Car was hit by a rashly and negligently driven offending vehicle. As a result of the impact, occupants of the Car sustained injuries. Ajay Kumar and Lahri Singh succumbed to the injuries. FIR was registered at Police Pundri on the statement of Suresh Kumar.

In the claim proceedings, the Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. It was proved that the deceased was 47 years old and was working as a Lecturer in Govt. Senior Secondary School, Kheri Saraf Ali, District Karnal and was getting salary of ₹52,905/-. The Tribunal deducted the House Rent Allowance (H.R.A.), handicapped allowance and medical allowance and considered salary of the deceased as ₹47,500/-; 30% future prospects were awarded; 1/4th deduction for self-expenses was made and applied split multiplier i.e. multiplier of '9' upto the age of retirement and multiplier of '11' subsequently. The Tribunal awarded compensation of ₹61,68,185/- alongwith interest @ 7% per annum. The amount awarded included ₹15,000/- for loss of consortium, ₹20,000/- for funeral expenses and ₹20,000/- on account of loss of love and affection. 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 under 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 be deducted. He further contends that income tax payable should also be deducted from the gross salary.

Learned counsel for the claimants argues that the Tribunal erred in not considering the gross salary for awarding the compensation. The grievance raised is that the amounts awarded under the conventional heads are on the lower side and the Tribunal erred in applying the split multiplier.

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)."*

The contention raised by learned counsel for the claimants that gross salary should be considered for awarding compensation deserves acceptance. The only deduction to be made is of the income tax payable.

Reliance 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."*

There is no occasion to apply split multiplier. The multiplier is to be applied as per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and***

another (2009) 6 SCC 21.

The claimants are entitled to the compensation under the conventional heads as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157.***

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.

The matter with regard to the quantum of compensation is remitted back to the Tribunal to decide afresh in accordance with law.

The parties are directed to appear before the Tribunal on 16.05.2019.

Both the appeals are disposed of.

[AVNEESH JHINGAN]
JUDGE

April 03, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : No