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# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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**FAO No.8143 of 2014 (O&M) and**
**XOBJC No.18-CII of 2017**
**Date of Decision: 11.01.2019**

National Insurance Company Ltd.

Appellant

Versus

Smt. Urmila Devi and others

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Deepak Suri, Advocate
for the appellant.

Mr. Johan Kumar, Advocate
for the respondents.

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**AVNEESH JHINGAN, J (Oral):**

The award dated 16.12.2013 passed by the Motor Accident Claims Tribunal, Nuh [for brevity 'the Tribunal'] has been assailed by the Insurer of vehicle bearing registration No. HR-49-9624 [hereinafter referred to as 'offending vehicle']. The grievance raised is that the claimants have got compensation under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 [hereinafter referred to as 'Rules'] and no deduction has been made to the said amount.

In the appeal filed, the claimants have filed cross-objection seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The brief facts of the case are that on 11.12.2012, Radhey Lal alongwith his brother was going on motorcycle bearing registration No. HR-28A-7420. When they reached near village Gulalta, Tehsil Punhana, the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact, Radhey Lal sustained injuries. He was taken to Govt. Hospital Mandhikhera, where he was declared brought dead. FIR No. 487 was registered.

A claim petition was filed under Section 166 of the Act by the widow and two minor children of the deceased. It was pleaded that the deceased was working as Clerk in Public Works Department (Building & Roads). His salary was proved as ₹23,887/- per month. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The compensation was calculated by taking monthly income of the deceased as ₹22,102/- after deducting House Rent Allowance and Medical Allowance, 1/3rd deduction for self-expenses was made and multiplier of '16' was applied.

The Tribunal awarded a sum of ₹25,00,000/- alongwith interest @ 7% per annum. The amount awarded included ₹25,000/-

under the conventional heads.

Heard learned counsel for the parties, perused the paper book and the record.

Learned counsel for the insurer contends that the deceased was an employee of Haryana Government and he was covered under Rules and no amount received under the Rules has been deducted by the Tribunal. He relies upon the decision of the Supreme Court in ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others 2016 (12) JT 409.***

The claimants have filed the cross-objection for enhancement of compensation.

Learned counsel for the claimants is not in a position to dispute the fact that the claimants have received assistance under the Rules. He argues that the Tribunal erred in calculating the compensation by taking monthly salary of the deceased as ₹22,102/-. He further contends that no future prospects have been awarded and the amount under the conventional heads are on the lower side.

As per the decision of the Supreme Court in ***Shashi Sharma's*** case (supra), the amount received under the Rules has to be deducted. The Supreme Court held:-

> *"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)."*

Keeping in view the law laid down by the Supreme Court, certain factual aspects have to be decided like deduction of the amounts received under the Rules. In order to decide the issues, the parties will have to adduce evidence.

The matter is remanded back to the Tribunal to quantify the compensation afresh in accordance with law.

It is clarified that contention of the claimants for enhancement of compensation shall also be considered. The parties are directed to appear before the Tribunal on 12.02.2019.

The appeal and cross-objection are disposed of accordingly.

**[AVNEESH JHINGAN]**
**JUDGE**

**January 11th, 2019**
*pankaj baweja*

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