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

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1. **<u>FAO No.9195 of 2014 (O&M)</u> with
XOBJC No. 269-CII of 2018
Date of Decision: 14.03.2019**

Reliance General Insurance Company Ltd.

Appellant

Versus

Poonam Devi and others

Respondents

2. **<u>FAO No.390 of 2015</u>**

Poonam Devi and others

Appellants

Versus

Rahul Rana and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Mriganki Nagpal, Advocate for
Mr. Suman Jain, Advocate
for the appellant [in FAO No.9195 of 2014]
for respondent No.2 [in FAO No.390 of 2015].

Mr. R.K. Agnihotri, Advocate
for the appellants [in FAO No.390 of 2015]
for respondents No.1 to 3 [in FAO No.9195 of 2014].

Mr. Virender Kumar, Advocate
for respondent No.3-Cross Objector (claimant)
[in FAO No.9195 of 2014].

Mr. B.S. Brar, Advocate
for respondent No.4 [in FAO No.9195 of 2014]
for respondent No.1 [in FAO No.390 of 2015].

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AVNEESH JHINGAN, J (Oral):

The award dated 17.07.2014 passed by the Motor Accident Claims Tribunal, Karnal [for brevity 'the Tribunal'] in claim petition No.132 of 2003 has been assailed. One appeal has been filed by the insurer of Car bearing registration No. HR-75-2356 [hereinafter referred to as 'offending vehicle'] and another by the claimants. The legal heirs of mother of Lal Chand (deceased) have filed cross-objections in the appeal filed by the insurer of the offending vehicle.

[2] Brief facts of the case are that a motor vehicular accident took place on 26.10.2011 and the same proved fatal for Lal Chand. The accident was caused due to the rash and negligent driving of the offending vehicle.

[3] In the claim proceedings, it was proved that the deceased was posted as a Chowkidar in *Uttar Haryana Bijli Vitran Nigam* (UHBVN) and was getting a salary of ₹14,293/-. His age was taken as 35 years. In the pleadings, it was claimed that the deceased was getting ₹25,000/- per month as salary. The official of UHBVN was examined who stated that widow was getting salary/pension of ₹15,947/-. The Tribunal awarded a compensation of ₹32,86,824/- alongwith interest @ 7.5% per annum. The insurer of the offending vehicle was held liable to pay the compensation.

[4] In the appeals filed by the insurer and the claimants,

the challenge is to the quantum of compensation. One of the issue raised is that the legal heirs of the deceased are getting financial assistance under *Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006* [hereinafter referred to as 'Rules'] and the same has not been deducted. Reliance has been placed on the decision of the Supreme Court in ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma and others, JT 2016 (12) SC 409.*** 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 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 tort feasor 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)."

[5] Further challenge is to the multiplier applied and amounts awarded under the conventional heads.

[6] In the cross-objections, brothers and sisters of the deceased have raised grievance that during the claim proceedings, mother of the deceased expired and they were not brought on record and they have not been given any share in the compensation.

[7] For deciding the issues involved in both the appeals, certain factual aspects need to be gone into for which adducing of further evidence by the parties would be required.

[8] So far as cross-objection filed by the brothers and sisters of the deceased is concerned for being shown in loss of dependency, they will have to establish that they were dependents on the deceased. From the perusal of the record, it is *prima facie* evident that their father was alive at the time of accident. The said matter will also have to be proved.

[9] The observation made above shall not be construed that there is any observation of this Court with regard to entitlement of brothers and sisters of the deceased towards compensation.

[10] Without expressing any opinion on the merits of the case, the matter only with regard to quantum of compensation and its apportionment is remitted back to the Tribunal to be decided afresh in accordance with law after providing

opportunity to the parties to adduce fresh evidence in support of their claims.

[11] The parties are directed to appear before the Tribunal on 29.04.2019.

[12] Both the appeals and cross-objections are disposed of, accordingly.

[AVNEESH JHINGAN]
JUDGE

March 14, 2019
pankaj baweja

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