

FAO-8604 of 2015 (O&M)

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

FAO No.8604 of 2015 (O&M)
Date of decision: 04.09.2019

Smt. Sunita and others

.....Appellants

versus

Virender Kumar and others

.....Respondents

FAO No.8652 of 2015 (O&M)

Reliance General Insurance Company Ltd.

.....Appellant

versus

Smt. Sunita and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Anju Arora, Advocate, for the appellants
in FAO No.8604 of 2015 and
for respondents No.1 to 3 in FAO No.8652 of 2015.
Mr. Sanjeev Kodan, Advocate, for the appellant
in FAO No.8652 of 2015 and
for respondent No.3 in FAO No.8604 of 2015.

RAMENDRA JAIN, J. (ORAL)

CM-17795-CII of 2019

Through this application under Section 151 CPC prayer has been made for placing on record salary voucher of deceased Sanjeev Kumar and Haryana Government Policy of November, 2006 and August, 2006 as Annexures A-1 to A-3, respectively.

Heard.

For the reasons mentioned in the application, same is allowed,

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subject to all just exceptions. Documents are taken on record as Annexures A-1 to A-3.

Main Appeals

By this common judgment above-titled two appeals i.e. FAO No.8604 of 2015 filed by claimants for enhancement of compensation and FAO No.8652 of 2015 filed by the insurance company for reduction in compensation awarded to the claimants, modifying impugned award dated 22.09.2015 passed by Motor Accident Claims Tribunal, Jind (in short 'the Tribunal'), are being disposed of.

For the sake of brevity, facts are being taken from FAO No.8604 of 2015.

Briefly, in the night of 21.12.2013, deceased Sanjeev Kumar, aged around 38 years, a Government teacher, drawing monthly salary of ₹38,840/-, as per salary slip, (Annexure A-1) driving his scooty bearing registration No.HR-31F-9972, followed by his brother-in-law Anil Kumar in his car bearing registration No.HR-02AD-0017, when covered some distance from Safidon bye-pass, offending jeep bearing registration No.HR-31G-0107 driven in a rash and negligent manner by respondent No.1, owned by respondent No.2 and insured with respondent No.3 struck against scooty of deceased Sanjeev Kumar and fled away from the spot. As a result thereof, Sanjeev Kumar received multiple grievous injuries on his person. He was shifted to Civil Hospital, Jind, by his brother-in-law Anil, but observing his serious condition, he was referred to PGIMS, Rohtak, where he succumbed to his injuries on the next day during treatment.

Being aggrieved of death of Sanjeev Kumar, his widow and

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Act, 1988 (in short 'the Act') before the Tribunal for awarding adequate compensation to them.

The Tribunal after holding trial, awarded them compensation of ₹40,80,000/- along with interest at the rate of 8% per annum from the date of filing claim petition till realization.

Learned counsel for the insurance Company relying upon ***Reliance General Insurance Co. Ltd. v. Shashi Sharma and others*** 2016 (4) R.C.R.(Civil) 569 (S.C.) and ***Sebastiani Lakra and others v. National Insurance Company Ltd. and others***, 2018(4) R.C.R.(Civil) 837 (S.C.) contends that the Tribunal has erred in not considering the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'the Rules') according to which claimants being dependents of deceased Sanjeev Kumar would receive his last drawn salary continuously for 12 years. Therefore, while calculating the entitlement of claimants for compensation, the last drawn salary for 12 years of the deceased was to be deducted.

Strongly refuting above submission, relying upon judgment of a Co-ordinate Bench of this Court in ***Kamla Devi and others v. Sahib Singh and others***, FAO No.3064 of 2013 decided on 30.11.2017, learned counsel for the claimants contends that last drawn salary of the deceased for 12 years has not to be deduced for awarding compensation to his dependents.

Having given thoughtful consideration to the rival submissions, this Court finds the submissions made by learned counsel for the claimants completely mis-conceived and an effort to extract compensation from the insurance company in illegal manner. The Apex Court in ***Shashi Sharma***

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employee in a motor vehicular accident, insurance company is entitled to deduct amount receivable by his dependents in terms of Rule 5(1) of the Rules towards financial assistance equivalent to the loss of pay and wages of the deceased employee for the period specified. In ***Sebastiani Lakra (supra)*** the Apex Court has repeated that Employees Family Benefit Scheme is totally different from the Rules, which were under consideration of this Court in the case of ***Shashi Sharma (supra)***. Under the aforesaid Scheme, the nominee or legal heir(s) of the deceased employee have to deduct the entire amount of gratuity and all other benefits payable to them on the death of the employee.

That apart, it has been pointed out by learned counsel for the insurance company that judgment in ***Kamla Devi (supra)*** has been stayed by the Hon'ble Supreme Court. Therefore, no benefit of the same can be given to the claimants from this angle too.

Learned counsel for the claimants and insurance company have filed their respective calculations, which are taken on record as Mark 'A'. Considering the dictum laid down by the Hon'ble Supreme Court, claimants are held entitled to compensation of ₹14,68,240/-, whereas Tribunal has awarded ₹40,80,000/- i.e. ₹26,11,760/- in excess to their entitlement.

In view of above, appeal filed by the claimants is dismissed and that of the insurance company is accepted. The impugned award is modified to the effect that claimants shall be entitled to compensation of ₹14,68,240/-, as per calculation submitted by insurance company, along with interest at the rate of 7.5% per annum from the date of filing claim petition till realization. Insurance Company is directed to deposit the

aforesaid amount within one month from today before the Tribunal for

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onward disbursement of the same to the claimants in proportion, so arrived at by the Tribunal in accordance with law against proper receipt and identification, failing which the insurance company would be liable to pay the same with interest at the rate of 15% from the date of institution of claim petition till realization.

(Ramendra Jain)
Judge

September 04, 2019
R.S.

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