

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:14.5.2019

FAO No. 791 of 2016(O&M)

Monika and others

---Appellants

vs.

Rajender Kumar and others

---Respondent

FAO No. 1397 of 2016(O&M)

TATA AIG General Insurance Company Limited

---Appellant

vs.

Monika and others

---Respondents

Cross Objections No.13-C of 2017 in/and FAO No. 1398 of 2016 (O&M)

TATA AIG General Insurance Company Limited

---Appellant

vs.

Subina @ Sabina and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sudhir Hooda, Advocate
for the appellants in FAO-791 of 2016
for respondents No. 1 to 5 in FAO-1397 of 2016
Mr. Rajesh K.Sharma, Advocate
for the appellant in FAO-1397 and 1398 of 2016
Mr. Ajay Shekhawat, Advocate
for respondent Nos 1 to 4 in FAO- 1398 of 2016
and for cross-objectors

Rekha Mittal, J.

This order will dispose of FAO Nos. 791, 1397 and 1398 of
2016 and cross objections No. 13-C of 2017 filed in FAO No. 1398 of 2016

as these have emerged out of the same award dated 23.10.2015 passed by the Motor Accidents Claims Tribunal, Rohtak (in short “the Tribunal”) whereby compensation has been assessed on account of death of Sandeep and Ajay in a motor vehicular accident that took place on 9.10.2014.

FAO No. 791 of 2016 has been filed by Monika and others seeking enhancement of compensation on account of death of Sandeep whereas the other two appeals have been preferred by Tata AIG General Insurance Company Limited (hereinafter referred to as “insurance company”) to assail the award with regard to death of Sandeep and Ajay. Cross objections No. 13-C of 2017 have been filed by Subina @ Sabina and others in FAO No. 1398 of 2016, for enhancement of compensation on account of death of Ajay.

Counsel for the insurance company would inform that appeals have been preferred to assail only quantum of compensation assessed by the Tribunal.

FAO Nos. 791 and 1397 of 2016

With regard to death of Sandeep, the Tribunal awarded Rs. 60,31,361/- (rounded off to Rs. 60,31,000/-), detailed hereunder:-

Monthly income of the deceased	Rs. 27,125/-
Increase in income for future prospects	50%
Income Tax	Rs. 25,000/-
Deduction for personal expenses	1/4 th
Multiplier	17
Loss of dependency	Rs. 59,06,361/-
Loss of love and affection, deprivation of protection, loss of consortium to widow and social security etc.	Rs. 1,00,000/-
Funeral and other expenses	Rs. 25,000/-

Counsel for the insurance company would argue that Sandeep

was working in Haryana Police Department. His family is entitle to last drawn pay under **The Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006 (in short “Rules of 2006”)**. It is further argued that compassionate assistance available to widow of the deceased is amenable to deduction for computing loss of dependency. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Reliance General Insurance Company Limited vs. Shashi Sharma and others 2016(4) RCR (Civil) 569**.

Counsel representing the claimants, on the contrary, would argue that only 50% of the amount of compassionate assistance is to be deducted in the light of judgment of this Court **Kamla Devi and others vs. Sahib Singh and others FAO No. 3064 of 2013 decided on 30.11.2017** affirmed by Hon'ble the Supreme Court. It is further argued that the Tribunal has wrongly deducted conveyance allowance and ration allowance to the tune of Rs. 720/- per month while computing loss of dependency.

Before advertng to the submissions made by counsel for the parties with regard to deduction of compassionate assistance in the light of judgments cited at bar, it is appropriate to deal with quantum of compensation payable for death of Sandeep. The Tribunal, in para 14 of the award, has noticed that as per salary slip Ex. P12, salary of the deceased was Rs. 27,845/- per month. The Tribunal has not given benefit of Rs. 720/- paid towards conveyance allowance and ration allowance. Since the benefit of these two allowances was available to family of the deceased, the same cannot be excluded from salary for computing loss of dependency. In this

context, reference can be made to judgments of Hon'ble the Supreme Court,

National Insurance Company Limited vs. Indira Srivastava and others 2008(1) RCR (Civil) 359 and Manasvi Jain vs. Delhi Transport Corporation 2014(3) RCR (Civil) 313.

The Tribunal has deducted income tax after adding benefit of future prospects. The income tax is to be deducted from net annual income and thereafter benefit of future prospects is to be added. In this context, reference can be made to judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.**

The annual income of the deceased @ Rs. 27,845/- per month comes to Rs. 3,34,140/- (27,845 x12) After deducting income tax of Rs. 6,606/-,net annual income is Rs. 3,27,534/-. The Tribunal has rightly extended benefit of future prospects @ 50% as the deceased was a government employee. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 62,64,088/- $[3,27,534 \times 17 = 55,68,078 + 27,84,039 (50\%) = 83,52,117 - 20,88,029 (1/4^{\text{th}})]$.

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/- in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra)** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

Loss of consortium to widow	Rs. 40,000/-
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Expenses on funeral Rs. 15,000/-

Loss of estate Rs. 15,000/-

Total compensation is Rs. 63,34,088/-.

This brings the court to deduction of financial assistance available to family of the deceased. There is no material on record to show whether job of the deceased was pensionable or not, thus, the entire amount of compassionate assistance is liable to be deducted.

The deceased was born on 11.9.1987 and was due for retirement much later as he was 27 years old at the time of occurrence. Rule 5 of the Rules of 2006 deals with criteria for financial assistance. Clause (a) of Rule 5(1) provides for compassionate assistance for a period of 15 years if the employee at the time of his death had not attained the age of 35 years. Since in the present case Sandeep was less than 30 years of age, his wife shall be entitle to financial assistance for a period of 15 years. Thus, amount at the rate of Rs. 27845/- is calculated to the tune of Rs 27,845 x12x15= 50,12,100/-. After deducting Rs.50,12,100/- net compensation payable to the claimants is Rs. 13,21,988/- (63,34,088- 50,12,100). Accordingly, compensation allowed by the Tribunal is reduced to the extent of Rs. 47,09,012/- (60,31,000-13,21,988). The insurance company is entitle to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeals stand disposed of.

Cross Objections No.13-C of 2017 in/and
FAO No. 1398 of 2016 (O&M)

With regard to death of Ajay, the Tribunal awarded Rs.

54,95,130/- (rounded off to Rs. 54,95,000/-), detailed hereunder:-

Monthly income of the deceased	Rs.27,713/-
Increase in income for future prospects	50%
Income Tax	Rs. 25,000/-
Deduction for personal expenses	1/3 th
Multiplier	17
Loss of dependency	Rs. 53,70,130/-
Loss of love and affection, deprivation of protection, loss of consortium to widow and social security etc.	Rs. 1,00,000/-
Funeral and other expenses	Rs. 25,000/-

In view of discussion made in FAO No. 791 of 2016, annual income of the deceased @ Rs. 28,433/- per month comes to Rs. 3,41,196/- (28,433 x 12). After deducting income tax of Rs. 7333/-, net annual income is Rs.3,33,863/-. The Tribunal has rightly extended benefit of 50% as the deceases was a government employee. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.56,75,671/- [3,33,863 x 17 = 56,75,671 + 28,37,835(50%) = 85,13,506-28,37,835 (1/3rd)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/- in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra)** and **Sebastiani Lakra and others' case (supra)** detailed hereunder:-

Loss of consortium to widow	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-
Total compensation is Rs. 57,45,671/-	

This brings the court to deduction of financial assistance

available to family of the deceased. There is no material on record to show whether job of the deceased was pensionable.

The deceased was due for retirement much later as he was 26 years old at the time of occurrence. Rule 5 of the Rules of 2006 deals with criteria for financial assistance. Clause (a) of Rule 5(1) provides for compassionate assistance for a period of 15 years if the employee at the time of his death had not attained the age of 35 years. Since in the present case Ajay was less than 30 years of age, his wife shall be entitle to financial assistance for a period of 15 years. Thus, amount at the rate of Rs. 28,433/- per month is calculated to the tune of Rs. 28,433 x12 x15= 51,17,940/-. After deducting Rs. 51,17,940/-, net compensation payable to the claimants is Rs. 6,27,731/- (57,45,671- 51,17,940). Accordingly, compensation allowed by the Tribunal is reduced to the extent of Rs. 48,67,269/ (54,95,000-6,27,731). The insurance company is entitle to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal and cross objections stand disposed of.

(Rekha Mittal)
Judge

14.5.2019
paramjit

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