IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230 Date of decision: 13.12.2019

FAO No.908 of 2016 (O&M)

The New India Assurance Co. Ltd. ... Appellant

Versus

Sunita Sharma and others ... Respondents

FAO No.1003 of 2016 (O&M)

Sunita Sharma and another ... Appellants

Versus

Puneet Kumar and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Suvir Dewan, Advocate
for the insurance company.
Mr. Brijender Kaushik, Advocate
for the appellants in FAO No.1003 of 2016.
Mr. JS Khattar, Advocate
for respondents No.1 and 2 in FAO No.908 of 2016.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.908 and 1003 of 2016 as these have emerged out of the same award dated 30.07.2015 passed by the Motor Accidents Claims Tribunal, Ambala whereby compensation has been assessed on account of death of Rajnish Kumar Sharma in a motor vehicular accident that took place on 26.09.2014.

FAO No.908 of 2016 has been filed by New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed to assail only quantum of compensation.

The Tribunal awarded Rs.40,14,508/-, detailed hereunder:-

Monthly income of the deceased	Rs.66,657/-
Deduction of income tax	Rs.13,331/-
Net monthly income	Rs.53,326/-
Multiplier	9

Deduction for personal expenses	1/3rd
Loss of dependency	Rs.38,39,508/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.50,000/-

Counsel for the insurance company would argue that as the deceased was an employee of Government of Haryana, financial assistance available to family of the deceased under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006') is liable to be deducted. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569**. Another submission made by counsel is that compensation allowed under conventional heads may be restricted to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**.

Counsel representing the claimants, on the contrary, would argue that the Tribunal has wrongly deducted a sum of Rs.3196/- per month of HRA while calculating monthly income of the deceased at Rs.66,657/-. Claimants may be allowed benefit of addition in income for future prospects @ 15%. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Pranay Sethi and others's case (supra).**

Indisputably, gross salary of the deceased was Rs.69,853/-. The amount of HRA is not amenable to deduction. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. VS. Indira Srivastava and others, 2008(1) RCR (Civil) 359** and **Manasvi Jain VS. Delhi Transport Corporation, 2014(3) RCR (Civil) 313**. As such, the entire income of the deceased to the tune of Rs.69,853/- shall be taken into account for computing monthly loss of dependency. The annual income comes to Rs.8,38,236/-. After deducting income tax (Rs.95,426/-), net annual income is Rs.7,42,810/-. Claimants shall be entitle to addition in income for future prospects @ 15%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.51,25,388/-

[(7,42,810 x 9) + (15% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.51,95,388/-.

Undenyingly, the deceased was Principal of Government Senior Secondary School, BC Bazar, Ambala Cantt. In view of the facts elicited in cross examination of Vipan Kumar PW2, family of the deceased has been paid salary upto 31.01.2015, date of retirement on superannuation. The total amount @ Rs.69,853/- for a period of four months i.e. October, 2014 onwards till 31.01.2015 comes to Rs.2,79,412/-. Only 50% thereof is liable to deduction in view of the judgment of this Court **Kamla Devi and others Vs. Sahib Singh and others, FAO No.3064 of 2013, decided on 30.11.2017**. After deducting a sum of Rs.1,39,706/-, compensation payable to the claimants comes to Rs.50,55,682/- and additional amount is Rs.10,41,174/- (50,55,682 - 40,14,508) which shall carry interest @ 7.5% per annum from the date of petition till realization, payable to widow of the deceased, to be invested in fixed deposit for a period of two years.

The appeals are disposed of accordingly in the aforesaid terms.

13.12.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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