IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3283 of 2017 (O&M)
Date of decision: 10.12.2019

Kiran and others

….Appellants

Versus

Rajesh Kumar and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. N.K. Malhotra, Advocate,
for the appellants.

Mr. Navneet Singh, Advocate,
for respondent No.1.

Mr. Punit Jain, Advocate,
for Mr. M.B. Jain, Advocate,
for respondent No.2-New India Insurance Company Ltd.

Mr. Sandeep Singal, Advocate,
for respondent No.3.

Mr. Suman Jain, Advocate,
for respondent No.4-United India Insurance Company Ltd.

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RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'the Tribunal') vide award dated 06.12.2016 on account of death of Tej Pal in a motor vehicular accident which took place on 26.03.2016. Appellant No.1 is widow and appellant Nos.2 & 3 are children of deceased Tej Pal.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 26.03.2016, at about 8.00

A.M., Tej Pal (since deceased) along with Devinder @ Bittu and Smt. Janki was coming to Rohtak on Auto-rickshaw bearing registration No. HR-46-D-2933, which was being driven by respondent No.3-Krishan. When they reached at Makrauli turn, Gohana Road, Rohtak, a Maruti Swift car bearing registration No. HR-11-F-4977, being driven by Rajesh Kumar-respondent No.1 in a rash and negligent manner, came from behind and rammed in the Auto-rickshaw, as a result of which, auto-rickshaw turned turtle and all the passengers, including driver, received multiple injuries. Ashok and Rampal took the injured to Post Graduate Institute of Medical Science, Rohtak. Unfortunately, during treatment, Tej Pal succumbed to the injuries. With regard to the incident, FIR No.186 dated 26.03.2016, under Sections 279/337/304-A IPC was registered against respondent No.1 at Police Station, Sadar, Rohtak. Consequently, the claimant-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had taken place on account of rash and negligent driving of the offending vehicle bearing No.HR-11-F-4977 by its driver-respondent No.1, which resulted into the death of Tej Pal. This finding was rightly given on the basis of deposition of Devender (PW-1), who was eye witnesses of the accident and on whose statement, FIR Ex.P1 was registered. Apart from this, claimants have also proved on record copy of postmortem report of deceased as Ex.P6.

Deceased Tej Pal was a Govt. employee and was posted as Clerk in the Education Department, Haryana. As per summary of salary statement Ex.P13, total salary of deceased-Tej Pal was Rs.21,599/- per month, which included Rs.834/- as House Rent Allowance and Rs.500/- miscellaneous expenses. After deducting House Rent Allowance and miscellaneous expenses, his income was taken as Rs.20,265/- per month. In this income, 30% addition was made on account of future expenses. Accordingly, total income of deceased came to Rs.26,344/- (Rs.20,265 + Rs.6079/-), out of which, one-third amount was deducted towards his personal expenses. By doing so, the total income of deceased came to Rs.17,563/- per month. The deceased was 46 years of age at the time of death/accident. Accordingly, multiplier of 13 was applied. After applying the multiplier of 13, dependency of claimants came to Rs.27,39,828/- (17,563/- x 12 x 13). In addition to it, claimants were held entitled to Rs.1,00,000/- on account of loss of consortium, Rs.1,00,000/- each to respondent Nos. 2 and 3 for loss of love and affection and Rs.25,000/- as funeral expenses. In total, the claimants were found entitled to total compensation of Rs.30,64,828/-. The Tribunal has further observed that in the instant case, as per Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006, the claimants would get financial assistance to the tune of Rs.20,265/- per month for twelve years, so they would get Rs.29,18,160/-, which is much higher than the aforesaid compensation. Ultimately, the claimants-appellants were held entitled to get Rs.3,25,000/- being compensation for loss of consortium, loss of love and affection and funeral expenses, as detailed above. This amount was awarded along with interest @ 7.5% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. There is no dispute with regard to the finding given by Tribunal on issue No.1 that the accident had taken place on account of rash and negligent driving of the offending vehicle by its driver.

Hon'ble the Supreme Court in ***Reliance General Insurance Co. Ltd. vs. Shashi Sharma & others,*** 2016 (4) RCR (Civil) 569, has examined the issue with regard to the calculation of compensation after adjusting the payment made to the dependents of deceased Govt. employee under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006. In this regard, the criteria has been laid down 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 dependents/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).
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> 23. A Priori, appellants must succeed only to the extent of amount receivable by the dependents of the deceased Government employee in terms of Rule 5 (1) of the Rules 2006, towards financial assistance equivalent to the loss of pay and wages of the deceased employee for the period specified."

In the facts of the present case, the Tribunal has deducted amount of Rs.29,18,160/- as per the aforesaid verdict given by Hon'ble the Supreme Court and amount of Rs.3,25,000/- has been awarded in favour of the claimants-appellants towards loss of consortium, loss of love and affection and funeral expenses. This compensation has been rightly assessed after following the due procedure, as set out in ***Shashi Sharma's*** case (supra). Accordingly, no ground is made out to interfere in the compensation awarded by the Tribunal. The evidence has been appreciated in the right perspective.

Resultantly, finding no merits, the present appeal is dismissed.

10.12.2019 **(RITU BAHRI)**
ajp **JUDGE**

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