IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 332 of 2012
Date of decision: March 08, 2019

Sushila and others ... Appellants

Versus

Ram Phal and others ..Respondents

CORAM:HON'BLE MR.JUSTICE AVNEESH JHINGAN

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Present: - Mr. Ashwani Bhardwaj, Advocate
for the appellants.

Mr. Suman Jain, Advocate with
Mr. Shubham Jain, Advocate
for respondent No.4.

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AVNEESH JHINGAN, J. (ORAL)

The award dated 02.06.2011 passed by the Motor Accident Claims Tribunal, Hisar (for brevity 'the Tribunal') in MACT Case No. 92 of 2010, has been assailed by the legal heirs of Dharambir Singh seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

Alongwith the appeal, an application has been moved for adducing additional evidence, to which reply has been filed by the insurer.

The issue raised by learned counsel for the appellants is that the income of the deceased has not been rightly assessed by the Tribunal as the deceased was regularly getting over time. He further states that the quantum of financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (hereinafter referred to a 'Rules'), has wrongly been quantified for deducting the same from compensation.

Learned counsel for the insurer argues that the deceased was getting variable over time and it cannot be added to his income. He further contends that the claimants have got financial assistance under the Rules and same is to be deducted. He relies upon the decision of the Supreme Court in ***Reliance General Insurance Co. Ltd. vs. Shashi Sharma and others 2016 (12) JT 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:-

> "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 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).

In order to decide the monthly earning of the deceased certain factual aspects need to be gone into, for which the parties may be required to adduce further evidence.

The second issue as regards to the quantum of financial assistance received under the rules also require consideration of facts based on the evidence already adduced or required to be adduced by the parties.

Without expressing any opinion on the merits of the case, the matter is remitted back to the Tribunal to decide afresh the issue of income of the deceased and the amount to be deducted under the Rules, after affording opportunity to the parties to adduce evidence in support of their claims.

It is however, clarified that insurer would be at liberty to raise all objections including legal objections available to him.

The appeal is disposed of in the aforementioned terms.

(AVNEESH JHINGAN)
JUDGE

08.03.2019
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Whether speaking/ reasoned: Yes
Whether Reportable: No