IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5835 of 2018(O&M)

Date of decision: 24.1.2019

ICICI Lombard General Insurance company Ltd. …..Appellant

VERSUS

Roshni and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Sheenu Sura, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against order dated 26.06.2018 passed by the Commissioner under the Employees' Compensation Act, 1923 (in short 'the Act'), Ambala whereby compensation was assessed on account of death of Sunder Singh driver of Haryana Roadways Ambala in an accident that occurred on 19.10.2010 when the deceased was on duty at Bus No.HR-37C-1963 en-route Delhi to Katra.

The Commissioner has assessed compensation to the tune of Rs.7,88,240/- plus interest for 4 years to the tune of Rs.3,78,355/- and Rs.5000/- for funeral expenses payable with simple interest at the rate of 12% per annum on the amount of compensation from the date of order till realization.

Counsel for the appellant has assailed quantum of compensation primarily on two grounds. The first submission made by counsel is that as family of the deceased shall be entitle to financial assistance under the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (In short 'Rules of

2006), the same is liable to be deducted out of compensation assessed in the instant case. In support of her contention, she has relied upon judgments of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569** and **Smt. Rita Devi and others Vs. New India Assurance Co. Ltd. and another, (2000) 5 SCC 113.** It is vehemently argued that in view of judgment in **Shashi Sharma's case** (supra), Hon'ble the Supreme Court has held that in case family of the deceased is allowed compensation under the Motor Vehicles Act, 1988 (in short 'M.V. Act') as well as compassionate assistance available under the Rules of 2006, it would amount to extending double of the benefit, therefore, financial assistance allowed under the Rules of 2006 is liable to be deducted out of compensation assessed by the Motor Accidents Claims Tribunal under the M.V. Act. It is argued that on the same analogy, amount paid to family of the deceased under the Rules of 2006 is liable to be deduced. It is further argued that in **Smt. Rita Devi and others case** (supra), the Court has held that the relevant extract of both the Acts i.e. Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923 are to provide compensation to victims of accident. The only difference between the two enactments is that so far as the Workmen's Compensation Act, 1923 is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapter X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. Further held that objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence judicially accepted interpretation of the word death in Workmens Compensation Act , in the opinion of their

Lordships, is applicable to the interpretation of the word death in the Motor Vehicles Act also.

The second submission made by counsel is that the Commissioner has applied factor of 197.06 by considering age of the deceased to be 35 years but an appropriate factor is liable to be applied on the basis of age of the deceased at 36 years.

I have heard counsel for the appellant, perused the paper-book particularly the impugned order and judgments cited at bar.

There is no dispute qua preposition of law laid down in **Shashi Sharma's case** (supra) while dealing with grant of compensation under the M.V. Act. The observations made in **Smt. Rita Devi and others case** (supra) are to the effect that both the enactments are beneficial legislation to compensate the victim or his family.

In the Employees' Compensation Act, 1923, Section 4 deals with amount of compensation to be paid in case of death of an employee or injury resulting in permanent total disablement to an employee. Counsel for the appellant has failed to point out any provision in the M.V. Act that deals with amount of compensation. On the contrary, Section 166 of the M.V. Act provides that compensation to be assessed by the Tribunal should be just and reasonable.

Section 4 of the Employees' Compensation Act, 1923 says that subject to the provisions of the Act, the amount of compensation shall be as follows, namely:-

(a) where death results from the injury :	an amount equal to fifty per cent of the monthly wages of the deceased employee

multiplied by the relevant factor; or an amount of one lakh and twenty thousand rupees, whichever is more;

Once the legislation in its wisdom had made a specific provision as to how amount of compensation is to be calculated in a claim preferred by an employee or his family under the Employees' Compensation Act, 1923 and there is no provision for making any deduction in respect of any other financial assistance available to family of the victim, it is difficult to accept contention of the appellant that financial assistance available to family of the deceased under the Rules of 2006 is liable to be deducted out of compensation assessed by the Commissioner. In this view of the matter, the appellant cannot derive any advantage to its contention from the judgments aforesaid.

So far as the plea with regard to incorrect factor being applied, the same is misconceived and liable to be rejected. The victim was slightly more than 34 years of age when the occurrence in question took place but he died before completing 36 years. As the deceased had not completed 36 years by the time he passed away, the Commissioner has rightly applied the factor on the basis of age of the deceased to be 35 years.

Perusal of the impugned order would reveal that the Commissioner has awarded interest at the rate of 12% per annum on the amount of compensation from the date of order i.e. 26.06.2018. Sub-Section (3) of Section 4A of the Act says that where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall- (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due.

In the case at hand, compensation with regard to death of Sunder Singh became due 30 days after his death on 21.12.2011 but was not paid by his employer. Hon'ble the Supreme Court in **Oriental Insurance Co. Ltd. Vs. Siby George, AIR 2012 SC 3144** has held that in case the employer fails to make payment of compensation within 30 days from the due date, interest would be payable from the date of occurrence. In the given circumstances, interest would be payable from the date of death and not from the date of order and the same would be available till actual realisation of the amount of compensation. Accordingly, order impugned is modified in the aforesaid terms.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed in limine. However, the order impugned is modified in the aforesaid terms. A copy of order be sent to the claimants in order to enable them to realize the compensation along with interest in terms of order passed by this Court.

JANUARY 24, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**
Whether speaking/reasoned : yes/no
Whether reportable : yes/no