IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 908 of 2018 (O&M)
DECIDED ON: JANUARY 22, 2019

RELIANCE GENERAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

SAVITA MEHTA AND OTHERS

.....RESPONDENTS

AND

FAO No. 2556 of 2018

SAVITA MEHTA AND OTHERS

.....APPELLANT

VERSUS

KAMAL KUMAR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjeev Kodan, Advocate
for the appellant in FAO No. 908 of 2018 and
for respondent No.3 in FAO N. 2556 of 2018.

Mr. Jagram Singh Cooner, Advocate
for the appellants in FAO No. 2556 of 2018 and
for respondents No.1 to 4 in FAO No. 908 of 2018.

Ms. Babita Bisht, Advocate
for respondents No.7 & 8 in FAO No. 908 of 2018.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate
for respondent No.9 in FAO No. 908 of 2018

*****

AVNEESH JHINGAN J. (ORAL)

The award dated 21.12.2017 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhari (for brevity 'the Tribunal') has been assailed in two appeals. One appeal is by the insurer of car bearing registration No. HR-02-M-6325 (hereinafter referred to as 'offending vehicle') and other by the claimants i.e. FAO No. 908 of 2018 and FAO No. 2556 of 2018, respectively.

The afore-said two appeals are being disposed of by a common order as both the appeals have arisen out of the same award and same accident.

The brief facts necessary for adjudication of the present appeals are that on 23.07.2011 Kamal Kishore Mehta was a pillion rider on motorcycle bearing registration No. HR-02-X-6413, which was being driven by Darshan Singh. They were going from Railway Workshop to the house of Kamal Kishore Mehta. On their way, the motorcycle was hit by a rashly and negligently driven offending vehicle. As a result of the impact both the riders of the motorcycle fell down. Kamal Kishore Mehta suffered grievous injuries and lost consciousness at the spot. He was taken to J.P. Hospital, Yamunanagar from where he was referred to PGI, Chandigarh but he succumbed to the injuries on the way. FIR No. 378, dated 24.07.2011 was registered at Police Station Yamunanagar.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the claimants. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

It was pleaded by the claimants in the claim petition that the deceased was working with Indian Railways as Senior Clerk and was drawing monthly salary of ₹38,880/-. The date of birth of the deceased was 13.06.1961. The Tribunal considered only the basic salary of the deceased and added 15% future prospects. 1/3rd deduction was made for self-expenses and multiplier of 13 was applied. The Tribunal awarded a compensation of ₹20,78,032/- alongwith interest @7.5% per annum. The amount awarded included ₹70,000/- under the conventional heads.

Heard learned counsel for the parties and perused the paper book and other relevant documents produced by them.

Learned counsel for the insurer has raised three contentions. Firstly, that the deceased was above 50 years of age, hence, the multiplier of 11 should have been applied instead of 13. Secondly, that the son of the deceased got a compassionate appointment and he was not to be considered dependant upon deceased, the Tribunal had wrongly made 1/3rd deduction for self-expenses. Thirdly, that in her statement the widow of the deceased deposed that she had received ₹4,50,000/- from Railway Department and the said amount has not been deducted by the Tribunal while awarding the compensation.

Learned counsel for the claimants contends that the Tribunal erred in computing the compensation considering the basic salary of the deceased.

The contentions raised by the insurer lack merit.

The contention raised by the insurer that the Tribunal has wrongly applied the multiplier of 13 instead of 11, as the deceased was above 50 years of age, is against the settled proposition of law laid down by the Supreme Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; (2009) 6 SCC 121,*** which has subsequently been approved in ***National Insurance Co. Ltd. vs. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009.*** A table has specifically been given by the Supreme Court in which the column of age is not overlapping. It deals with age 46-50 and 51 to 55. Meaning thereby, that anybody below 51 years of age would fall within the age group of 46-50 and thus, the multiplier of 13 has rightly been applied.

The second contention that the son of the deceased got a compassionate appointment and should not be considered as a dependant need not to be gone into. Suffice to say that apart from the son there were three dependants, which have not been disputed. In consonance with the decision of the Supreme Court in ***Sarla Verma's*** case (supra), 1/3rd deduction for self-expenses has rightly been made by the Tribunal.

Coming to the third contention that the amount of ₹4,50,000/- received by the widow from the Railway Department has not been deducted, the said amount was received by her, on account of gratuity and other funds. It is evident from her statement, the relevant portion of which is extracted below:-

> *"I have received all the gratuity and other funds from Railway Department. I have got about ₹4,50,000/-."*

From the statement, it is clear that the amount received by her was on account of various funds including gratuity of the deceased.

The Supreme Court in ***Sebastiani Lakra and others vs. National Insurance Company Ltd. and another;*** ***2018 (10) JT 318,*** has held as under:

> *"12. The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance,or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death."*

It was held by the Supreme Court that the amount received on account of gratuity etc. accrues to the estate of the deceased, which was a result of some contract or act which the deceased performed in his life time. The same is not outcome of his death. These would not effect the compensation to be awarded under the Act. Consequently, the appeal filed by the insurer i.e. FAO No. 908 of 2018 is dismissed.

The contention raised by the claimants that the Tribunal erred in considering the basic salary of the deceased for awarding compensation deserves acceptance. The issue that it is the gross salary less income tax payable, if any is to be considered under the Act is no longer *res-integra* in view of the decision of the Supreme Court in ***Manasvi Jain Vs. Delhi Transport Corporation, 2014 (3) RCR (Civil) 313,*** wherein it has been held as under :-

> *"12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that "while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.".*

The compensation is to be calculated considering the gross salary of the deceased at the time of accident. The matter for the purpose of calculation of compensation on gross salary less income tax payable, if any, is remitted back to the Tribunal.

Parties are directed to appear before the Tribunal on 28.02.2019.

Appeal filed by the claimants i.e. FAO No. 2556 of 2018 is disposed of in the afore-said manner.

(AVNEESH JHINGAN)
JUDGE

JANUARY 22, 2019
sham

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