

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-8118-2017(O&M)

Date of decision:-8.4.2019

Shalini Sharma and others

...Appellants

Versus

Avtar Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.V.D. Sharma, Advocate
for the appellants.

Mr.Harkesh Kumar AAG, Haryana.

Mr.V.K. Garg, Advocate
for respondent No.3.

Mr.Vinod Gupta, Advocate
for respondent No.6.

None for other respondents.

H.S. MADAAN, J.

On account of death of Manoj Kumar in a motor vehicular accident, which took place on 12.6.2015 in the area of P.S. Naggal, District Ambala statedly on account of rash and negligent driving of bus No.HR-57-7961 by respondent No.1 – Avtar Singh and bus No.HR-64-9610 by respondent No.4 – Sohan Lal @ Sunni, the legal representatives of Manoj Kumar - deceased i.e. his wife – Smt.Shalini Sharma, aged about 35 years, minor daughter – Baby Himanshi Sharma, minor son – Master Mukul and mother - Smt.Shashi Bala had brought a claim petition

under Section 166 of the Motor Vehicles Act against respondents i.e. Avtar Singh – driver, General Manager, Haryana Roadways Sirsa Depot – owner and Oriental Insurance Co. Ltd. through its Branch Manager, Branch Office Jind – insurer of bus No.HR-57-7961 as well as Sohan Lal @ Sunni – driver, General Manager, Haryana Roadways, Kaithal Depot – owner and New India Asurance Co. Ltd. through its Branch Manager, Branch Office, Jind – insurer of bus No.HR-64-9610 besides State of Haryana through Deputy Commissioner, Jind.

After contest, the claim petition was allowed by learned Motor Accidents Claims Tribunal, Jind vide award dated 31.3.2017 and compensation of Rs.7,82,144/- with interest @ 7.5 % per annum from the date of filing of claim petition till realization was awarded to the claimants payable by respondents No.1 to 6 jointly and severally. The liability was apportioned between the respondents No.1 to 3 to the extent of 50% and respondents No.4 to 6 remaining 50%, finding it to be a case of contributory negligence.

The claimants felt aggrieved by the said award and have approached this Court by way of filing an appeal, notice of which was given to respondents.

I have heard learned counsel for the parties besides going through the record.

It may be mentioned here that learned Tribunal had taken the age of deceased at the time of accident to be 34 years considering the age entered in his post mortem report Ex.P4 and date of birth entered in his matriculation certificate as 7.1.83, finally concluding that the deceased

had completed 32 years at the time of accident. As claimed by the petitioners/claimants and also established on record, the deceased was working as a Peon in Municipal Committee, Ellenabad. PW2 Sh.Chander Bhan, Clerk Municipal Committee, Ellenabad had placed on record copy of last pay certificate as Ex.P5 showing that the deceased was getting monthly salary of Rs.18,254/-. The Tribunal had added 50% of actual income of the deceased towards future prospects, in that way coming to the conclusion that monthly income of deceased was Rs.27,381/-, annual income of the deceased was found to be Rs.3,28,572/-(27381 x 12). Considering the number of claimants upon his earnings to be four, the Tribunal was justified in deducting 1/4th of the amount towards personal expenses, finding the dependency of claimants to be Rs.2,46,429/- (3,28,572 – 82,143). Keeping in view the age of deceased to be 32 years, as per the settled law on the subject, multiplier of 16 was rightly used, as a result of which total dependency of claimants came out to Rs.39,42,864/- (2,46,429 x 16).

The Tribunal has awarded a sum of Rs.1 lac on account of loss of consortium and funeral expenses of Rs.25,000/-. However, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.,2017(4) RCR(Civil)1009**, the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. Whereas the Tribunal granted Rs.55,000/-(1,25,000 - 70,000) excess amount.

The Tribunal has taken into view the fact that as per Haryana

Compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2006, 5(1), on the death of any Government Employee, the family of the employee would continue to receive as financial assistance a sum of equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim. The Tribunal observed that the said amount was to be adjusted in the amount of compensation and relied upon law laid down by the Apex Court in **Reliance General Insurance Co.Ltd. Versus Shashi Sharma and others 2016 ACJ 2723.**

The Tribunal has taken into consideration the admission made by claimant Smt.Shalini Sharma in her cross-examination while appearing as PW1 that her husband Manoj (since deceased) was working as a Peon in Municipal Committee, Ellenabad and he was permanent employee and she was getting full salary of her husband after his death to the tune Rs.17,000/- and she would get the salary upto the retirement age of her husband and thereafter she would be entitled to the pension. The Tribunal has referred to Haryana Compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2006, 5(1), which provides that on the death of any Government Employee, the family of the employee would continue to receive as financial assistance a sum of equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim:

(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty five years;

(b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty five years but had not attained the age of forty-eight years;

(c) for a period of seven years or till the date the employee would have retired from government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.

Since the deceased was below 35 years, so his family is entitled for compensation for 15 years, which when calculated comes out to Rs.32,85,720/-($2,19,048 - (18254 \times 12) \times 15$). The entitlement of compensation to the claimants comes out to Rs.7,82,144/- ($40,67,864 - 32,85,720$).

The claimants are feeling aggrieved by such deduction. However, the same is vehemently defended by learned counsel for the insurance company stating that it was so done by the Tribunal in accordance with law.

Learned counsel for the appellants has referred to judgment passed in FAO No.9644-2014 titled ***Oriental Insurance Company Ltd. Versus Suman Bala & Ors.*** wherein under the similar circumstances, a Co-ordinate Bench of this Court had deducted 50% of the financial assistance from the amount of compensation observing that family of the

deceased would have been entitled to pension to the extent of 50% of the last drawn pay, if the rules in question were not in existence.

However, learned counsel for the insurance company has contended that the Apex Court in *Reliance General Insurance Co. Ltd. Versus Shashi Sharma & Ors., 2016(4) RCR(Civil) 569* after considering all the facts and circumstances has observed that insurance company is entitled to deduct 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. It was further observed that measure of compensation must be just and adequate and no double benefit should be passed on to the claimants in the matter of award of compensation. However, it was further observed that the insurance company is not entitled to deduct the amount receivable by dependents of the deceased by way of social security.

After hearing learned counsel for the parties, I find that the Apex Court has clearly stated that the amount receivable by the dependents of the deceased Government Employee in terms of Rule 5(1) of Rules 2006 is liable to be deducted from the amount of compensation payable to the dependents. Such law laid down by the Apex Court is to be followed. The Tribunal has rightly done so.

Therefore, in my considered view, the compensation payable to the claimants on account of death of Manoj has been properly worked out and there is no scope for any enhancement.

As regards the excess amount awarded to the claimants under

the conventional heads, since the insurance company has not filed any cross appeal or cross-objections, I do not find it proper to grant such benefit to it.

Therefore, finding no merit in the present appeal, the same stands dismissed.

8.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No