HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

MA No.495/2011
And
CCROS No.13/2013

Reserved on : 22.07.2020
Pronounced on: 05.08.2020

Union of India and another ...Appellant(s)

Through:- Mr. Vishal Sharma, ASGI

V/s

Anima Rani Dass and others ...Respondent(s)

Through:-Mr. R.K.Bhatia, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. Union of India and Commanding Officer, 104 Engineer Regiment are in appeal against the award dated 21st January, 2011 passed by the Motor Accident Claims Tribunal, Jammu in Claim file No.475/Claim titled Anima Rani and Das others v. R.B.Patil and others, whereby respondent Nos. 1 to 3 (hereinafter 'the claimants') have been held entitled to compensation of ₹ 18,73,500 along with interest @ 7.5% per annum on account of death of one Sh. Subal Dass.

2. The impugned award has been primarily assailed on quantum. It is submitted that the amount of compensation awarded by the Tribunal is exorbitant and excessive.

3. The claimants have also filed cross-objections/appeal seeking enhancement, inter alia, on the following grounds:-

i) That the applicable multiplier in the instant case is 15 but the Tribunal has erroneously applied the multiplier of 12.

ii) Certain allowances i.e. ration, uniform, accommodation, medi-care etc have not been taken into consideration while assessing the income of the deceased.

iii) No compensation for loss of estate and love and affection has been granted.

iv) The effect of implementation of 6th pay commission report has not been taken into consideration by the Tribunal.

v) The amounts awarded under conventional heads are also on lower side.

4. Relying upon few judgments of the Supreme Court, learned ASGI submits that several payments received by the claimants from the appellants on account of death of Sub. Subal Dass, particularly, ₹5,00,000.00 relating to Central govt. ex-gratia payment, were liable to be deducted from the loss of income/dependency to the claimants. The Tribunal having failed to deduct the payments made on account of ex-gratia to the claimants has, thus, conferred double benefit on the claimants.

5. *Per contra*, Mr. R.K.Bhatia, learned counsel appearing for respondent Nos. 1 to 4 (claimants), placing reliance on the recent judgment of the Supreme Court rendered in the case of **Sebastiani Lakra and others v. National Insurance Company Limited and another, AIR 2018 SC 5034**, urges that the payments and service benefits including ex-gratia payment made to the dependents/legal heirs of the deceased employee, cannot be deducted from computation of compensation under the Motor

Vehicles Act, 1988, unless such payment/payments have co-relation with the motor accident. Learned counsel argues that all these payments, to which reference has been made by the appellants in the memo of appeal, are otherwise payable to the dependents of the deceased employee irrespective of the cause of death. He further submits that no such claim was made by the appellants before the Tribunal nor any policy, statutory or otherwise pertaining to the payment of ex-gratia relief, was brought on record by the appellant and it is because of this reason, the Tribunal did not frame any specific issue in this regard.

6. Having heard learned counsel for the parties and perused the record, I am of view that so for as the plea of the appellants that the ex-gratia payment of ₹ 5,00,000/-, which was received by the claimants on account of untimely death of the deceased should have been deducted from the loss of income/dependency of the claimants is without substance for the reasons given hereinafter.

7. There are two, seemingly, contradictory three-Judge Bench judgments, one rendered in the case of **Reliance General Insurance Company Limited v. Shashi Sharma and others, 2016 (9) SCC 627** and the other in the case of **Sebastiani Lakra** (supra). In the later three-Judge Bench judgment in the case of **Sebastiani Lakra**, the judgment rendered in the case of *Shashi Sharma* (supra) has been explained and distinguished. In *Shashi Sharma's* case, a three-Judge Bench of the Supreme Court while hearing a reference also considered incidental question as to whether there was any conflict of opinion between the Coordinate two-Judge Benches of this Court, in the case of **Bhakra Beas Management Board v. Smt.Kanta Aggarwal, 2008(11) SCC 366** on one hand, and that of **Helen C. Rebello**

v. Maharashtra SRTC, 1999 (1) SCC 90 and **United India Insurance Company v. Petricia Jean Mahajan, 2002(6) SCC 281** on the other hand. The Supreme Court after adverting to the entire case law on the subject in paragraph No.16 concluded thus:-

> "16. The principle discernable from th exposition in Helen C. Rebello's case (supra) is that if the amount "would due to the dependents of the deceased even otherwise", the same shall not be deductible from the compensation amount payable under the Act of 1988. At the same time, it must be borne in mind that loss of income is a significant head under which compensation is claimed in terms of the Act of 1988. The component of quantum of "loss of income", inter alia, can be "pay and wages" which otherwise would have been earned by the deceased employee if he had survived the injury caused to him due to motor accident. If the dependents of the deceased employee, however, were to be compensated by the employer in that behalf, as is predicated by the Rules of 2006-to grant compensation assistance by way of ex-gratia financial assistance on compassionate grounds to the dependents of the deceased Government employee who dies in harness, it is unfathomable that the dependent can still be permitted to claim the same amount as a possible or likely loss of income to be suffered b them to maintain a claim for compensation under the Act of 1988."

8. These observations of the Supreme Court in the case of Shashi Sharma's case (supra) have been sought to be explained by a three-Judge Bench judgment in the case of **Sebastiani Lakra** (supra). The discussion made by the Supreme Court in paragraph Nos.15 and 16 is very relevant and is, thus, noticed below:-

> "15. As held by the House of Lords in Perry v.Cleaver, 1969 ACJ 363 the insurance amount is the fruit of premium paid in the past, pension is the fruit of services already rendered and the wrong doer should not be given benefit of the same by deducting it from the damages assessed.
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> 16. Deduction can be ordered only where the tort-feaser satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident."

9. The conclusion arrived at by the later three-Judge Bench is, thus, that deductions can be ordered only where the tort- feaser satisfies the Court that the amount has been paid to the claimants only on the ground of death of the deceased in a motor vehicle accident. Essentially, the latter Bench has approved the ratio of **Helllen C. Rebello**. Reference to a recent two-Judge Bench judgment of the Supreme Court in the case of **National Insurance Company Limited v. Mannat Johal and others, 2019 ACJ 1849** would also be of great assistance. In the aforesaid judgment the Supreme court has taken note of both **Shashi Sharma (supra)** and **Sebastiani Lakra (supra)** and has, in paragraph No.12.2 held thus:-

> "12.2 In the present case too, it has not been shown if the ex gratia amount received by the claimants had been under any rules of service and would be of continuous assistance, as had been the case in *Shashi Sharma, 2016 ACJ 2723(SC),* as per the Rules of 2006 considered therein. In an overall analysis and wit reference to the decision in *Sebastiani Lakra, 2019 ACJ 34 (SC),* we are clearly of the view that the decision in *Shashi Sharma* would not apply to the facts of the present case and no

deduction in the amount awarded by the high Court appears necessary.

10. It may be noteworthy that in *Mannat Johal*, the Supreme Court was confronted directly with the payments received by the claimants on account of ex-gratia. As is apparent from the discussion made in paragraph Nos. 12 and 12.1, which paragraphs, for facility of reference are reproduced hereunder:-

> "12. Taking up the question of ex gratia payment received by the claimants from the employer of the deceased, it is noticed that an amount of Rs. 3,21,801/- was paid by the employer to the claimants, being one year's gross salary of the deceased. While relying on the decision in Shashi Sharma, it is contended on behalf of the insurer that the ex gratia amount so received by the claimants is required to be deducted. Noticeable it is that in Shashi Sharma's case, a three-Judge Bench of this Court was dealing with the payment received by the legal heirs of the deceased in terms of Rule 5 of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 ('Rules of 2006') whereunder, on the death of a government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods specified in the Rules and after the said period, the family would be entitled to receive family pension. The family would also be entitled to retain the government accommodation for a period of one year in addition to payment of Rs. 25,000/- as ex gratia. Rule 5 of the Rules of 2006 taken into consideration in Shashi Sharma's case(supra) reads as under:
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> > "5. Criteria for financial assistance.—(1) On the death of any government employee, the family of the employee would continue to receive as financial assistance a sum 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.

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.

(3) The family of a deceased government employee who was in occupation of a government residence would continue to retain the residence on payment of normal rent/licence fee for a period of one year from the date of death of the employee.

(4) Within fifteen days from the date of death of a government employee, an ex gratia assistance of twenty-five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.

(5) House rent allowance shall not be a part of allowance for the purposes of calculation of assistance."

12.1. The aforesaid decision in Shashi Sharma has been explained and distinguished by another three-Judge Bench of this Court in Sebastiani Lakra (supra) in the following:-

> “10. In Shashi Sharma's case, 2016 ACJ 2723 (SC), this court was dealing with the payments made to the legal heirs of the deceased in terms of rule 5(1) of the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (for short 'the said Rules’). Under rule 5 of the said Rules on the death of a government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods set out in the Rules and after the said period the family was entitled to receive family pension. The family was also entitled to retain the Government accommodation for a period of one year in addition to payment of Rs. 25,000 as ex gratia. In this case, the three-Judge Bench adverted to the principles laid down in Helen C. Rebello's case 1999 ACJ 10 (SC), followed in Patricia Jean Mahajan's case 2002 ACJ 1441 (SC), and came to the conclusion that the decision in Vimal Kanwar's case 2013 ACJ 1441 (SC), did not take a view contrary to Helen C. Rebello or Patricia Jean Mahajan cases (supra). The following observations are relevant:
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> "(12) The principle expounded in this decision in Helen C. Rebello's case that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the 'pecuniary advantage' from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act of 1939, and must apply proprio vigore to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been re-stated in the subsequent decision of the two-Judge Bench in Patricia Jean Mahajan's case, 2002 ACJ 1441 (SC), to reject the argument of the insurance company to deduct the amount receivable by the dependants of the deceased by way of 'social security compensation' and 'life insurance policy'."

> However, while dealing with the scheme the court held that applying a harmonious approach and to determine a just compensation payable under the Motor Vehicles Act it would be appropriate to exclude the amount received under the said Rules under the head of 'pay and other allowances' last drawn by the employee. We may note that on principle this court has not disagreed with the proposition laid down in Helen C.Rebello or in Patricia Jean Mahajan (supra), but while arriving at a just compensation, it had ordered the deduction of the salary received under the statutory Rules."

11. What emerges from the discussion made herein above is that only such payments received by the legal heirs of the deceased government employee are liable to be deducted from computation of compensation under motor vehicle accidents as are co-related to the death of the deceased employee in motor accident. All such payments including payment of ex-gratia by the employer, which have no co-relation with the motor vehicle accident and are otherwise also payable in case of death of employee for whatever reason are not to be taken into account for assessment of loss of dependency. Unless, it is demonstrated by reference to the Rules and evidence that payments have been received by the dependents/legal representatives of the deceased employee are on account of death of such employee in a motor accident, such payments cannot be deducted from the compensation payable under the provisions of Motor Vehicle Act, 1988.

12. It may be noted that ex-gratia payment is not made to the dependents of the deceased only because the deceased has died in a motor accident. The compensation is payable under the Motor Vehicle Act on account of pecuniary loss to the claimants by accidental injury and death and not other forms of death. It could not be demonstrated by Mr. Vishal Sharma, learned ASGI that the ex-gratia payment is not made, if there is natural death or death by suicide or serious illness, including that the death is by

accident through train or flight but not involving motor vehicle. Atleast, there is nothing of the sort pleaded or proved before the Tribunal. Interestingly, even policy or the rules governing payment of ex-gratia have not been brought to the notice of this Court.

13. In view of the law laid down by the Supreme Court, particularly, in the latest judgment of **Sebastiani Lakra (supra),** I am of the considered opinion that the payment(s) received by the claimants in the instant case by way of ex-gratia are not deductible from the compensation payable under the provisions of Motor Vehicle Act, as nothing has been brought to my notice to indicate that such payments have been only made because of the death of the deceased in motor accident and were not payable otherwise. Argument of learned ASGI, thus, is not tenable and the same is, accordingly, rejected.

14. Regarding quantum of compensation, it may be noted that the deceased in the instant case was Subedar in the Indian Army and at the time of accident was receiving a monthly emoluments of ₹ 14,892/-. He was 44 years old. The Tribunal has assessed the compensation by taking the monthly income as Rs.14,892/- and has correctly added 30% towards loss of future prospects, as the age of the deceased was above 40 years. So far as deduction towards personal expenses is concerned, the Tribunal has correctly followed the judgment of **Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 6 SCC 121** and has applied the deduction of 1/3rd to the established income. However, the Tribunal appears have gone wrong in the choice of multiplier to be applied. Going by the age of the deceased, the multiplier of 14 was applicable but the Tribunal has erroneously applied the multiplier of 12, which is not in

consonance with law laid down in the case of **Sarla Verma** (supra) and reiterated in a Constitution Bench Judgment in the case of **National Insurance Company Limited v. Pranay Sethi and others, (2017) 16 SCC 680.**

15. Similarly, the amounts awarded under conventional heads also deserves to be modified so as to bring them in conformity with **Pranay Sethi** (supra).

16. It is true that the Tribunal has not taken into consideration some allowances, which were payable to the deceased but at the same time, I find that the Tribunal has not given allowances for income tax deductions.

17. Accordingly, taking the income of the deceased as ₹ 14,892/-, adding 30% towards loss of future prospects, the monthly income of the deceased would come to ₹ 19,359/-. Deducting 1/3rd towards personal living expenses, the monthly loss of dependency would come to ₹ 12,906/-. Thus, the annual dependency comes to ₹ 1,54,872/-. Applying the multiplier of 14, the total loss of dependency would come to ₹ 21,68,208/-. Therfore, the claimants are held entitled to the compensation in the following manner:-

Loss of dependency	:	₹ 21,68,208/-
Funeral expenses	:	₹ 15,000/-
Loss of Estate	:	₹ 15,000/-
Loss of spousal consortium to respondent No.1	:	₹ 40,000/
Loss of parental consortium to respondent Nos.2 & 3 @ 40,000/- each	:	₹ 80,000/-
Total		**:₹ 23,18,208.00**

Rest of the terms and conditions imposed by the Tribunal as well as interest awarded shall remain intact.

18. For the foregoing reasons, the appeal is dismissed and the cross objections stand disposed in the above terms. The appellants shall deposit the balance amount before the Registry of this Court within a period of one month. The Registry shall thereafter release the amount in favour of the claimants after proper identification and verification.

(**Sanjeev Kumar)**
Judge

JAMMU.
05.08.2020
Vinod.

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No

VINOD KUMAR
2020.08.06 18:29
I attest to the accuracy and
integrity of this document