IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-260-CII-2018 IN FAO-3826-2015 (O&M)
Decided on : 06.01.2020

National Insurance Company Limited

. . . Appellant(s)

Versus

Veena Devi and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Aseem Aggarwal, Advocate
for the appellant(s) – Insurance Company.

Mr. Vishal Yadav, Advocate for
Mr. Vikrant Hooda, Advoate
for the respondents-claimants and
for the cross-objectors.

Mr. Surinder Gandhi, Advocate
for respondent No.7.

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MANJARI NEHRU KAUL, J.

This order shall dispose of FAO-3826-2015, filed by the Insurance Company, challenging the award dated 20th January, 2015, passed by the Ld. Motor Accidents Claims Tribunal, Jhajjar (hereinafter referred to as the 'the Tribunal') as well as XOBJC-260-CII-2018, filed by the claimants seeking enhancement of the compensation awarded to them by the Tribunal.

Brief facts necessary for adjudication of the case are that respondents/claimants No.1 to 5 filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the MV Act'), claiming compensation to the tune of Rs. 20,00,000/- on account of death of deceased Om Parkash. The claimants are the widow, three children and father of the deceased-Om Parkash, who lost his life due to the injuries received by him in the motor vehicle accident, which occurred on 21.10.2012, due to the rash and negligent driving of 'Trala' bearing registration No. PB-10DK/6924, by its driver Hawa Singh-respondent No.6. It has been pleaded that the deceased Om Parkash was 45 years of age at the time of his death and was working as a Canal Guard, Water Services Division No. 1, Rewari.

Counsel for the appellant-Insurance Company contends that the Tribunal erred in not only awarding compensation to the tune of Rs.24,00,000/-, but further erred in not appreciating and rather ignoring the fact that the claimants were already recipients of the benefits under the Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006 (for brevity 'the Rules of 2006'), as the deceased was admittedly a Government employee and working as a Canal Guard, Water Services Division No. 1, Rewari. Hence, it has been urged that the awarded amount of compensation could not have been more than Rs. 10,00,000/- including the compensation awarded under various conventional heads. In support, the appellant-Insurance Company has placed reliance upon ***Oriental Insurance Co. V. Saroj Devi, 2012(2) RCR (Civil) 292***, wherein, the Court laid down a two step formula for the calculation of compensation in cases where the family of the deceased was entitled to receive the benefits under the Rules of 2006. Hence, it is prayed that the compensation so awarded to the claimants be scaled down accordingly.

On the other hand, cross-objections have been filed by the claimants seeking enhancement of the compensation and the same are accompanied with the applications for condonation of delay in filing and re-filing of the cross-objections.

Counsel for the cross-objectors/claimants have submitted that in fact the compensation awarded to them is inadequate and not in consonance with the judgments of the Hon'ble Supreme Court **National Insurance Company Limited v. Pranay Sethi and others, *2017(16) SCC 680*** and ***Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors*. 2018(4) RCR Civil 333**. It is thus prayed that the compensation be enhanced accordingly.

The Tribunal has awarded compensation of Rs. 24,00,000/-, detailed herein as under:-

Sr. No.	***Heads***	***Calculations/Amount (in ₹)***
1.	Monthly income of the deceased	12,458/-
2.	Deduction for personal expenses	1/4th
3.	Addition in income for future prospects	50%
4.	Multiplier	13
5.	Loss of dependency	21,84,000/-
6.	Loss of consortium	1,00,000/-
7.	Transportation expenses & last rights	16,000/-
8.	Love and affection	1,00,000/-
	Total	**24,00,000/-**

I have heard learned counsel for the parties and perused the evidence and other material available on record.

A perusal of the record reveals that the deceased was appointed in Government Service 06.02.2009 as a Canal Guard with Water Services Division No. 1, Rewari and was drawing a salary of Rs. 12,458/- per month at the time of his death. It was was clarified during the cross-examination of PW-4/Pardeep, Record-Keeper, Canal Guard, Water Services Division

No.1, Rewari, that the widow of the deceased was drawing the salary of her deceased husband-Om Parkash, as per the Rules of 2006, under which she was entitled to the salary of her deceased husband for 12 years i.e. till 2024.

Learned counsel for the Insurance Company while placing reliance on the judgment of the Apex Court rendered in ***Reliance General Insurance Co. Ltd. V. Shashi Sharma and others, 2016(4) RCR (Civil) 569***, has urged that the amount to be given to the claimants under the Rules of 2006, has to be deducted from the amount receivable by them.

It would be apposite to reproduce the relevant rules as under:-

> *"5.(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."*

In view of the above and as held by the Hon'ble Supreme Court in ***Reliance General Insurance Co.'s case*** (supra), the claimants would still be legally entitled to claim the last salary drawn by the deceased Om Parkash. However, as held by the Hon'ble Supreme Court a harmonious approach has to be adopted for determining a just compensation payable under the MV Act, for which the amount received or receivable by the respondents/claimants of the deceased Om Parkash under the Rules of 2006, towards the head of financial assistance equivalent to pay and other allowances, shall have to be excluded. As far as the other benefits which would accrue to the claimants in terms of the Sub Rule (2) to (5) of Rule 5 of the Rules of 2006, which would include family pension, provident fund, life insurance etc., the same would remain intact. They cannot be allowed to be deducted and would have to be paid to the claimants in terms of the judgment of the Hon'ble Supreme Court in ***Helen C. Rebello (Mrs.) & Ors. V. Maharashtra State Road Transport Corporation & Anr. (1998(4) RCR (Civil) 177***.

The award shall have to be reassessed including the deduction of the amount payable to the claimants as per the Rules of 2006. Hence, in the circumstances, the amount received or receivable by the claimants under the Rules of 2006 for 12 years would be calculated as Rs.17,93,952 (Rs.12,458 x 12 x 12). After deducting this amount, the compensation payable would come down to Rs.6,06,048/- (Rs.24,00,000 – Rs.17,93,952).

Therefore, the amount of compensation is scaled down to Rs.6,06,048/-. The claimants would be entitled to get interest @ 9% per annum from the date of filing of the claim petition till its actual realization on the amount of Rs.6,06,048/-. It is, however, clarified that the excess amount, if already paid, to the claimants shall be recovered by the Insurance Company by filing an appropriate application before the Tribunal.

It is clarified that since no parental consortium and filial consortium has been assessed *qua* the children and the parents of the deceased, the amount of compensation assessed as Rs. 1,00,000/- under the head of loss of consortium and Rs. 1,00,000/- under the head of loss of love & affection shall be equally distributed as Rs. 40,000/- each among the five claimants, as per the Apex Court judgment rendered in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram & Ors, 2018(4) RCR (Civil), 333***.

With the above modifications, FAO-3826-2015 filed on behalf of the appellant-Insurance Company is partly allowed and the XOBJC-260-CII-2018 filed on behalf of the cross-objectors/claimants stands dismissed. Therefore, no separate order is required to be passed in the applications for condonation of delay in filing and re-filing of the cross-objections.

(MANJARI NEHRU KAUL)
JUDGE

January 06, 2020

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No