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

FAO-2791-2020 (O&M) and
X-Objec-54 of 2020
Decided on : 27.10.2022

Shri Ram General Insurance Co. Ltd. ...... Appellant

Versus

Shakuntala Sharma and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rajbir Singh, Advocate
for the appellant.

Mr. J.S.Cooner, Advocate
for respondents No.1 to 4/cross-objectors.

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<u>Manjari Nehru Kaul, J.(Oral)</u>

Insurance Company is in appeal against the award dated 15.02.2020 passed by Motor Accident Claims Tribunal, Panchkula (hereinafter called as 'the Tribunal') in the claim petition filed under Section 166 of Motor Vehicles Act, 1988 (for short, 'the Act') wherein the following compensation was assessed and awarded to the claimants for the death of Dharam Pal (hereinafter referred to as 'deceased') in a motor vehicular accident, which took place on 09.04.2018:

Sr. No.	***Head***	***Amount***
1	Monthly salary	Rs.85,726/-
2	Net annual income after deduction of income tax	Rs.9,25,836/-
3	Addition in income for future prospects	Rs.1,38,876/-
4	Deduction for personal expenses	$1/4^{th}$
5	Multiplier	11
6	Total loss of dependency	Rs.87,83,870/-
7	Funeral expenses, loss of consortium and loss of estate	Rs.70,000/-

Sr. No.	*Head*	*Amount*
8	Deduction qua financial assistance under Rules of 2006	Rs.30,86,136/-
	Total compensation	Rs.57,67,734/-

The aforementioned amount of compensation along with interest @ 7.5% p.a. from the date of filing of the petition till the date of realization, was ordered to be paid jointly and severally by all the respondents.

Leaned counsel for the appellant-company submits that the amount of Rs.61,72,272/- would be receivable by the claimants from the employer of the deceased towards financial assistance for the remaining service tenure of the deceased i.e. six years. He submits that as per settled law, the entire amount of financial assistance would have to be deducted from the amount of compensation awarded by the Tribunal. However, in the instant case, the Tribunal had erroneously deducted the amount of financial assistance only to the extent of 50% i.e. Rs.30,86,136/- instead of the entire amount of Rs.61,72,272/-, out of the total compensation awarded of Rs.88,53,870/-. In support of his submissions learned counsel has placed reliance upon the judgment of Hon'ble Supreme Court in ***Reliance General Insurance Company vs. Shashi Sharma, 2016(9) SCC 627*** and ***National Insurance Company Ltd. vs. Birender and others in Civil Appeal No.242243 of 2020 (decided on 13.01.2020)***.

Learned counsel for the cross-objectors/respondents No.1 to 4, however, has opposed the submissions made by learned counsel for the insurance company and sought enhancement of the compensation awarded by the Tribunal. Learned counsel submits that the Tribunal had failed to award any compensation to the two sons and mother of the deceased towards loss of parental and filial consortium respectively. It has also been urged that the amount of compensation awarded by the Tribunal stood on a different footing than the financial assistance receivable by the claimants and hence the Tribunal in fact erred in even deducting the amount of Rs.30,86,136/- from the total compensation awarded. A prayer has been made by the learned counsel that not only the claimants be awarded the deducted amount of Rs.30,86,136/- but also the compensation under the conventional heads be enhanced as per the settled law.

Heard learned counsel for the parties and perused the relevant material available on record.

This Court finds merit in the submissions made by the counsel for the Insurance Company that the Tribunal had fallen into error in deducting only 50% of the amount of financial assistance receivable by the claimants.

Before proceeding further, it would be pertinent to distinguish between the terms “financial assistance” and “family pension”. Under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006, financial assistance is payable to the family of the deceased employee for the period prescribed under the Rules, from the time of his death, before the date of his superannuation. Family pension, on the other hand, is payable only after the date of superannuation of an employee. Further, it is settled law that pensionary benefits payable to the family of the deceased are not liable to be deducted from the compensation awarded under the Act. However, financial assistance, on the other hand, is liable to be deducted from the compensation as per the settled ratio of law laid down by the Hon'ble Supreme Court in ***Shashi Sharma's case (supra)***.

In the instant case, the Tribunal failed to appreciate the distinction between family pension and financial assistance and thus fell into error by including 'family pension' in the 'family assistance'. In the light of the ratio of law as laid down by the Hon'ble Supreme Court in ***Birender's case (supra)***, the entire amount of financial assistance should have been deducted by the Tribunal from the compensation awarded instead of just 50%.

This Court, however, finds merit in the submissions of the learned counsel for the cross-objectors that the children and the mother of the deceased should have been compensated for loss of parental and filial consortium respectively. They would be entitled to Rs.40,000/- each for loss of parental and filial consortium as per ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270***. The claimants would be entitled to Rs.15,000/- each for loss of estate and for funeral expenses. Since it has been held by the Hon'ble Supreme Court that the amounts under conventional heads would be subject to 10% enhancement after every three years, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimants would be entitled to Rs.44,000/- for loss of parental and filial consortium.

This Court in the aforesaid facts and circumstances thus, deems it appropriate to reassess and modify the compensation awarded to the injured-claimant as follows:

Sr. No.	***Head***	***Amount***
1	Monthly salary	Rs.85,726/-
2	Net annual income after deduction of income tax	Rs.9,25,836/-
3	Addition in income for future prospects	Rs.1,38,876/-
4	Deduction for personal expenses	1/4th
5	Multiplier	11
6	Total loss of dependency	Rs.87,83,870/-
7	Funeral expenses	Rs.16,500/-
8	Loss of estate	Rs.16,500/-
9	Loss of consortium (Rs.44,000 x 4)	Rs.1,76,000/-
10	Deduction qua financial assistance under Rules of 2006	Rs.61,72,272/-
	Total compensation	Rs.28,20,598/-

The claimants are, therefore, held entitled to a total sum of Rs.28,20,598/- as compensation along with interest @ 9% per annum from the date of filing of claim petition till its actual realization and would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

With the above modifications, the instant appeal and the cross-objection stand disposed of.

27.10.2022 **(MANJARI NEHRU KAUL)**
vinay **JUDGE**

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