**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(Sr. No. 223)**

(223/3) **FAO-6775-2017 (O&M)
Date of Decision : 19.05.2023**

Cholamandlam MS General Insurance Company Limited

...Appellant

Versus

Master Aryan and others

...Respondents

(223/4) **CM-24883-CII-2017 in/and
FAO-7494-2017**

Aryan and others

...Appellants

Versus

Sushil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Jain, Advocate for the appellant.

Mr. Rajesh Hooda, Advocate for the appellants in FAO-7494-2017.

Mr. Rajneesh Malhotra, Advocate for the respondent-ICICI Lombard General Insurance Company.

Mr. Aakash Juneja, Advocate for respondent No. 5 in FAO-6775-2017 and for respondent No. 2 in FAO-7494-2017.

Mr. Charanji Lal, Advocate for respondent No. 6 in FAO-6775-2017.

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Harsimran Singh Sethi J. (Oral)

CM-24883-CII-2017 in FAO-7494-2017

Present application has been filed seeking condonation of delay of 31 days in filing the appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed and delay of 31 days in filing the appeal is condoned.

FAO-6775-2017 and FAO-7494-2017

By this common order, two FAOs, which are cross appeals bearing FAO No. 6775-2017 and FAO No. 7494-2017 are being decided.

It may be noticed that on 30.06.2014, an accident took place in which Sumit Kumar, his wife Rashmi Kiran and the daughter Lakshita lost their lives. Aryan son of Sumit Kumar and Rashmi Kiran survived and the claim petition was filed by him along with the parents of deceased Sumit Kumar under Motor Accident Claims Tribunal, which claim petition has been allowed by the Motor Accident Claims Tribunal by the impugned Award and the claimants have been held entitled for a sum of ₹18,92,080/-. The said Award is under challenge at the hands of the Insurance Company as well as the claimants for enhancement.

In the appeal filed by the claimants, learned counsel appearing on behalf of the claimants submits that in the present case, the age of the deceased has not been taken into account correctly as the same has been recorded proportionate to the age of the parents of the deceased, which is not correct. Learned counsel submits that it has already come on record that at the time of death, the deceased Sumit Kumar was 36 years old, which age should be taken into consideration for computing the compensation.

Learned counsel for the respondent-Insurance Company has not been able to rebut the factum that the age of the deceased has not been correctly assessed by the Tribunal while computing the compensation. It may be noticed that the age is a relevant factor for applying the relevant multiplier for assessing the compensation, hence, as the age of the deceased was 36 years at the time of death, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 3483 of 2008 (Arising out of SLP(C) No. 8648 of 2007 titled as ***Smt. Sarla Verma and others,*** the multiplier of 15 should have been awarded in the present case instead of 9.

Further, 1/3rd deduction has been made for personal expenses, whereas keeping in view the number of claimants and dependents upon the deceased, which are 04 in number, the deduction should have been made only $1/4^{th}$ instead of 1/3rd.

Now coming upon the objection to the Award raised by the Insurance Company, learned counsel for the Insurance Company submits that in the present case, the deceased employee was a regular govt. employee of the State of Haryana and keeping in view a Policy issued, according to which, the dependent of the deceased employee was entitled for salary of the employee concerned as ex-gratia financial assistant upto the age the employee would have attained the age of superannuation and the dependents in the present case have already been granted the monthly salary of the deceased, which they will continue to get upto the age of 58 years, hence, a sum of ₹41,78,800/- should have been deducted from the compensation for which the claimants became entitled for, which has not been done in the present case.

Learned counsel for the claimants has not been able to rebut the said contention that claimants are only receiving the salary of the deceased every month and till receiving the salary upto the date, deceased would have attained the age of superannuation.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Keeping in view the facts recorded here-in-before, the objections to the Award raised by the claimants that the multiplier of 15 was to be applied for while calculating the compensation is liable to be accepted as the age of the deceased was 36 years at the time of the death. The said age has also not been disputed by the learned counsel for the Insurance Company, hence, the Award of the Tribunal is modified to the said extent. Further, it is also held that instead of $1/3^{rd}$ deduction made in the salary, the same should have been made at $1/4^{th}$ keeping in view the settled principle of law and number of dependents upon the deceased employee.

The objection of the Insurance Company that the ex-gratia financial assistance, which the claimants have been availing from the Govt. of Haryana, is also liable to be deducted from the compensation, learned counsel for the claimants has not been able to point out the fact that they have not received the said payment from the Govt. of Haryana, hence, the total compensation for which the claimants are entitled for, the amount which they have or will receive as an ex-gratia financial assistance amount from the Govt. of Haryana is liable to be deducted.

Keeping in the findings of this Court recorded hereinbefore, the total compensation for which the claimants are entitled for in respect of the death of Sumit Kumar is as under :-

1.	Income	Assessed – ₹29,020/-
2.	Future increase	50% increase as per latest Supreme Court judgment in case of NIC vs. Pranay Sethi, as deceased was 36 years old.
3.	Income after future increase	₹29,020/- + ₹14,510/- = ₹43,530/- (MACT had deducted 50% for compassionate pension)
4.	Deduction for personal expenses	1/4th (instead of 1/3rd by MACT)
4.	Dependency after 1/4th deduction	₹43,530 - ₹10,883/- = ₹32,647/-
5.	Multiplier	15
6.	Compensation	₹32,647/- x 12 x 15 = ₹58,76,460/-
7.	Loss of Estate	Nil
8.	Loss of Love and affection to all the claimants	2 lac to partents 2 lac to minor son = ₹4,00,000/-
9	Funeral Expenses	25,000/-
10.	Loss of Consortium	NIL
11.	Total compensation	₹58,76,460 + ₹4,00,000 + ₹25,000 = ₹63,01,460/-
12.	Deducted 50% on the ground that the family will get compassionate pension	Salary as per Haryana Govt. Compassionate Appointment Rules, 2006 Salary for 12 years + ₹29,020 x 12 x 12 = ₹41,78,880/-
13.	Total	₹63,01,460 – ₹41,78,880 = ₹21,22,580/-
14.	Interest	7.5%
15.	Total compensation granted	₹21,22,580/- with interest @ 7.5% from 23.12.2014 till date of payment
16.	Compensated awarded by MACT	₹19,92,080/-
17.	Enhanced compensation	₹21,22,580 – ₹19,92,080 = ₹1,30,500/-

Both the appeals are disposed of in above terms.

<u>CM-22136-CII-2017; CM-22137-CII-2017 and CM-25547-CII-2017 in FAO-6775-2017</u>

As the main appeal is disposed of, the present applications stand disposed of.

May 19, 2023 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No