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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-875-2022 (O&M)
Reserved on: 30.07.2024
Pronounced on: .09.2024

Kusum Lata and Ors. ... Appellants

Versus

The Oriental Insurance Company Ltd. and Ors.
... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Saurabh Dalal, Advocate for the appellants.

Mr. Harsh Aggarwal, Advocate
for Respondent No.1- Insurance Company.

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HARKESH MANUJA, J.

1. The present appeal lays challenge to an award dated 12.11.2021 passed by the learned Motor Accident Claims Tribunal, Rohtak (for brevity, “the Tribunal”), whereby though compensation of Rs.41,92,950/- was assessed in favour of appellants-claimants, yet they being granted Ex-gratia payment to the tune of Rs. 43,84,000/-; which is more than the compensation, no amount was awarded to them.

2. Briefly stated, the appellants/claimants being dependents of deceased, filed claim petition before the Tribunal praying for grant of compensation to the tune of Rs.60,00,000/- along with the interest of 15% per annum on account of death of Roshan Lal in a vehicular accident which took place on 19.05.2018 while alleging rash and negligent driving of respondent No.1-driver.

3. Learned Tribunal held that accident occurred due to rash and negligent driving of respondent No.1/ driver and after assessing income of the deceased being working as labourer @ Rs.6,000/- per month; awarded compensation in the following manner:-

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs. 3,80,580/-
2.	Add future income to the extent of 25% i.eRs. 3,80,580/- + Rs. 95,145/-	Rs. 4,75,725/-
3.	After 1/3rd deduction towards personal living and expenses i.e. Rs.4,75,725/ - Rs.1,58,575/-	Rs. 3,17,150/-
4.	Multiplier of 13 (Rs.3,17,150/- x 13)	Rs. 41,22,950/-
5.	Loss of estate	Rs.15,000/-
6.	Loss of consortium	Rs. 40,000/-
7.	Funeral Expenses	Rs. 15,000/-
	Total	Rs. 41,92,950/-

4. Being aggrieved against the award dated 12.11.2021, the present appeal has been preferred by the appellants/claimants for enhancement of compensation. Facts as specified in the claim petition and the issue regarding negligence of the driver been recorded in favour of appellants, therefore, for the sake of brevity, those are not being repeated here.

5. Learned counsel for the appellants/claimants assailed the award by submitting that the Ld. Tribunal granted future prospect @ 25% which was on the lower side and the same should have been assessed @ 30% as the deceased was in a government job being employed as a driver in Haryana Roadways in view of ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009. Learned counsel also submitted that the loss of parental consortium was not granted to the

deceased's family in view of "***United India Insurance Co. V. Satinder Kaur @ Satwinder Kaur & others***", (2021) 11 SCC 780. He further submitted that the appellants/claimants were also entitled for interest @ 15% per annum from the date of filing of claim petition till the release of the compensation amount in their favour. Lastly it was submitted that if the amount was to be given by the learned Tribunal in the form of compensation, the benefit would have been availed in one go and would have fetched interest too but the Government benefits were being released on monthly basis thereby, creating monetary loss to the appellants/claimants. He concluded his argument by submitting that the compensation granted under other conventional heads was also on the lower side.

6. On the other hand, learned counsel representing the respondent-insurance company submitted that the Ld. Tribunal rightly denied the grant of compensation as the appellants/claimants were getting family assistance/pension @ Rs. 32,300/- per month and the total of it was to come to Rs. 43,84,000/- which was going to be more than the award granted by the Ld. Tribunal. He placed reliance upon the decision of Hon'ble Apex in ***Reliance General Insurance Co. Ltd. v. Shashi Sharma***, reported as (2016) 9 SCC 627, wherein it was held that Ex gratia payment by employer to deceased's dependents was deductible from the MACT Compensation. The relevant para from the above decision is culled out as under:-

> *"**26.** Indeed, similar statutory exclusion of claim receivable under the 2006 Rules is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of pay and wages of the deceased has*

already been or will be compensated by the employer in the form of ex gratia financial assistance on compassionate grounds under Rule 5(1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants/claimants towards the head of "pay and allowances" in the form of ex gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the 2006 Rules would come into play if the government employee dies in harness even due to natural death. At the same time, the 2006 Rules do not expressly enable the dependants of the deceased government employee to claim similar amount from the tortfeasor or insurance company because of the accidental death of the deceased government employee. The harmonious approach for determining a just compensation payable under the 1988 Act, therefore, is to exclude the amount received or receivable by the dependants of the deceased government employee under the 2006 Rules towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased government employee in the normal course. This is not to say that the amount or payment receivable by the dependants of the deceased government employee under Rule 5(1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits is concerned, if the deceased government employee had survived the accident can still be *pursued by them in their claim under the 1988 Act. For, it is not covered by the 2006 Rules. Similarly, other benefits extended to the dependants of the deceased government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, life insurance, provident fund, etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependants of the deceased government employee, applying the principle expounded in Helen C. Rebello and Patricia Jean Mahajan"*

Learned counsel for the respondent-Insurance Company thus submitted that in the facts and circumstances of the case in hand, the appellants-claimants were adequately compensated and as such, the present appeal was liable to be dismissed.

7. I have heard learned counsel for the parties and perused the paper-book of the case. I find force in the arguments advanced by learned counsel for the appellants/claimants.

8. In the present case, the deceased was employed as a driver in the Haryana Roadways as he joined the services on 05.09.2002 on contract basis. His services were regularized as driver on 25.07.2007. Unfortunately, on 19.05.2018, he died in a motor vehicular accident while he was performing his duty. The deceased had drawn Rs.31,715/- as his last salary for the month of April, 2018 as per exhibit Ex.P7. After the demise, the family of deceased was getting ex-gratia payment/family pension @ Rs. 32,300/- per month which would be released till his retirement period i.e. 31.10.2029; the report in this regard was exhibited as Ex.P9. Coming to the arguments, Learned Counsel for the

appellants/claimants rightly pointed out that the Ld. Tribunal wrongly calculated future prospect @ 25% whereas it should have been assessed @ 30% in view of ***Pranay Sethi's*** case (supra) as the deceased was having permanent job as a driver in Haryana Roadways.

9. As far as the submission that even filial consortium was also to be awarded in view of law laid down by the Hon'ble Apex Court in ***Satwinder Kaur's*** case (supra), ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, learned counsel for respondent No. 1 was unable to rebut the same. Therefore, claimants are held entitled to Loss of parental consortium to the tune of Rs.48,000/- x 3 (Rs.1,44,000/-), appellants/claimants being spouse and children of the deceased. They are further entitled for Rs.18,000/- as compensation under the head of funeral expenses and Rs.18,000/- towards loss of estate by applying 10% increase under the conventional heads., but simultaneously, appellants/claimants are not entitled for compensation on account of loss of love and affection.

10. However, the argument with respect to the interest on the lump-sum amount does hold substance in view of the fact that the compensation assessed by the Tribunal has to be disbursed in favour of claimants in one go as per the scheme of Motor Vehicle Act, 1988 whereas, the release of compassionate assistance is being made on monthly basis. As such, the appellants-claimants are definitely going to incur loss of interest which otherwise they would have got into their hands in one go; rather than installments. In such situation, denial of award of interest on the amount compensation assessed till the date of release of such "interest component" needs to be granted and thus, is granted as otherwise it would amount to discrimination and different treatment with them in comparison to

the claimants who were getting compensation amount in one go and forming part of one common class-category for the purpose of Motor Vehicle Act, 1988; in terms of Section 166(1) (c), being the legal representatives of the deceased.

11. In view of the discussion made above, the appellants/claimants shall be entitled for the grant of following compensation:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased*	*Rs.3,80,580/-*
2.	*Add 30% of Future prospects*	*Rs.11,41,74/-*
3	*Total Income (Rs.3,80,580/- + Rs.11,41,74)*	*Rs4,94,754 /-*
4.	*Deduction (1/3)*	*Rs.1,64,918/-*
5.	*Loss of Income after applying multiplier of 13 as per age of approx. 48years(Rs.1,64,918/- X 13)*	*Rs.42,87,868/-*
6.	*Funeral Expenses*	*Rs.18,000/-*
7.	*Loss of Consortium (Rs.48000x3)*	*Rs.1,44,000/-*
8.	*Loss of Estate*	*Rs.18,000/-*
	Total Compensation	*Rs.44,67,868/-*
	Amount received as Ex-gratia	*Rs.43,84,000/-*
	Enhanced Amount	*Rs.83,868/-*

12. Furthermore, in continuation of the discussion made in the preceding part of the judgment, the appellants/claimants are entitled for grant of interest in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in ***Smt. Supe Dei and others Vs. National Insurance Company Limited and other***,(2009) (4) SCC 513 approved in a subsequent judgment titled as

Puttamma and others Vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid under Ex-gratia scheme shall be deducted from the enhanced compensation while calculating the interest. It also clarified that no deductions shall be made on account of any benefits paid to the claimants-appellants on account of insurance or on account of pensionary benefits or gratuity etc., if any.

13. Disposed off in the above terms.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

.09.2024 **(HARKESH MANUJA)**
Tejwinder **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*