IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

228 **FAO No.4396 of 2016 (O&M)**
Date of Decision : 28.02.2024

New India Assurance Company Ltd. ....Appellant

VERSUS

Kanta Devi and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate for the appellant.

Mr. S.S. Behl, Advocate for respondent Nos.1 to 5.

Mr. Shiv Kumar, Advocate for respondent No.7.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the Insurance Company aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as the 'Tribunal') vide award dated 31.03.2016.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.25,894/-
2	Annual income	[Rs.25,894 x 12] = Rs.3,10,728/-

3	Deduction 1/4th	[Rs.3,10,728 – 77,682] = Rs.2,33,052/-
4	Multiplier of 11	[Rs.2,33,052 x 11] = Rs.25,63,572/-
5	Loss of consortium	Rs.1,00,000/-
6	Loss of love and affection	Rs.2,50,000/-
7	Loss of estate	Rs. 5,000/-
8	Funeral expenses	Rs.25,000/-
	Total Compensation	**Rs.29,43,572/-**
	Interest	**7.5% per annum**

4. Learned counsel for the appellant would contend that in the present case the claimant-respondent Nos.1 to 5 had received salary for the period of 58 months under the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2006 (hereinafter referred to as the 'Rules of 2006'). Learned counsel for the appellant has relied upon judgments of the Hon'ble Supreme Court in the cases of **Reliance General Insurance Co. Ltd. vs. Shashi Sharma & Ors. [2016(4) RCR (Civil) 569]** and **Krishna & Ors. vs. Tek Chand & Ors. [SLP (C) No.5044 of 2019 decided on 05.02.2024]** to contend that from the total amount of compensation assessed, the amount which the claimant-respondent Nos.1 to 5 would have received under the Rules of 2006, ought to have been deducted. Learned counsel for the appellant has fairly stated that since the amount is to be re-worked out, certain additions would have to be made in view of the law laid down by the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**. It has been submitted that the salary of the

deceased has rightly been assessed, deduction of $1/4^{th}$ has correctly been applied and a multiplier of 11 has also rightly been applied, however, the amount awarded under the conventional heads and as well as under the head of loss of consortium is not in accordance with the law.

5. *Per contra* learned counsel for claimant-respondent Nos.1 to 5 has contended that no addition has been made towards loss of future prospects, which ought to have been 15%. He has relied on the judgments in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra) to contend that the amount awarded under the conventional heads would have to be re-worked out and all the claimants, who are 5 in number, would be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium i.e. parental and spousal.

6. Heard.

7. The Hon'ble Supreme Court in case of **Shashi Sharma** (supra) has held as under :

> *19. Reverting back to Rule 5, sub-clause (1) provides for the period during which the dependents of the deceased employee may receive financial assistance equivalent to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim. Sub-rule (2) provides that the family shall be eligible to receive family pension as per the normal Rules only after the period during which they would receive the financial assistance in terms of sub-rule (1). Sub- rule (3) guarantees the family*

of a deceased Government employee of a Government residence in occupation for a period of one year from the date of death of the employee, upon payment of normal rent/license fee. By virtue of sub-rule (4), an ex-gratia assistance of 25,000/- is provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner. Sub-rule (5) clarifies that house rent allowance shall not be a part of allowance for the purposes of calculation of assistance.

20. Rule 5 broadly deals with two aspects. Firstly, to compensate the dependents of the deceased Government employee by granting ex-gratia financial assistance on compassionate grounds for the loss of pay and other allowances for a specified period. The second part of Rule 5 is to compensate the dependents of the deceased Government employee by way of allowances and concessions - of retaining occupation of the Government residence on specified terms, of family pension and other allowance. As regards the second part, it deals with income from other source which any way is receivable by the dependants of the deceased Government employee. That cannot be deducted from the claim amount, for determination of a just compensation under the Act of 1988.

21. The claimants are legitimately entitled to claim for the loss of "pay and wages" of the deceased Government *employee against the tortfeasor or Insurance Company, as the case may be, covered by the first part of Rule 5 under the Act of 1988. The claimants or dependents of the deceased Government employee (employed by State of Haryana), however, cannot set up a claim for the same subject falling under the first part of Rule 5 - "pay and allowances", which are receivable by them from employer (State) under Rule 5 (1) of the Rules of 2006. In that, if the deceased employee was to survive the motor accident injury, would have remained in employment and earned his regular pay and allowances. Any other interpretation of the said Rules would inevitably result in double payment towards the same head of loss of "pay and wages" of the deceased Government employee entailing in grant of bonanza, largesse or source of profit to the dependants / claimants. Somewhat similar situation has been spelt out in Section 167 of the Motor Vehicles Act, 1988, which reads thus:*

> *"167. Option regarding claims for compensation in certain cases. - Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to*

> *the provisions of Chapter X claim such compensation under either of those Acts but not under both."*

8. In the case of **Krishna** (supra) the judgment in the case of **Shashi Sharma** (supra) has been reiterated and relied upon. In view thereof, the amount received by the claimant-respondent Nos.1 to 5 under the Rules of 2006 would have to be deducted. The claimant-respondent Nos.1 to 5 had received the salary for 58 months, which comes to Rs.15,01,852/- (Rs.25,894 x 58). The Tribunal has correctly assessed the salary of the deceased as Rs.25,894/- per month and has also rightly applied a deduction of 1/4th and a multiplier of 11, however, no addition has been made towards loss of future prospects, which ought to have been 15%. Under the conventional heads, the claimant-respondent Nos.1 to 5 would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses as per the law laid down in the cases of **Pranay Sethi** (*supra*) and **N. Jayasree** *(supra)*. The claimant-respondent Nos.1 to 5 would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

9. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.25,894/-
2	Annual Income	[Rs.25,894x12] = Rs.3,10,728/-
3	Deduction 1/4th	[Rs.3,10,728-77,682] = Rs.2,33,046/-
4	Future Prospects - 15%	[Rs.2,33,046+34,957] = Rs.2,68,003/-
5	Multiplier - 11	[Rs.2,68,003x11] = Rs.29,48,033/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-

8	Loss of consortium (i) Parental (ii) Spousal	 [Rs.48,000/-x4] = Rs.1,92,000/- Rs.48,000/- Total Rs.2,40,000/-
	Total Compensation	**Rs.32,24,033/-**

10. Keeping in view the law laid down in the cases of **Shashi Sharma** (supra) and **Krishna** (supra), the claimant-respondent Nos.1 to 5 would be entitled to compensation of Rs.17,22,181/- [Rs.32,24,033 – Rs.15,01,852 (salary received for 58 months under Rules of 2006)]. The amount of compensation shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The compensation shall be apportioned amongst the claimant-respondent Nos.1 to 5 as directed by the Tribunal.

11. In view of the above discussion, the present appeal is disposed off and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

28.02.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO