112 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5335-2016 (O&M) with
XOBJC-35-CII-2017
Date of decision :13.11.2024

National Insurance Co. Ltd. ….Appellant

Versus

Sushila Devi @ Sushil & ors. ….Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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Present:- Mr. Rahul Pathania, Advocate
for the appellant-Insurance Company.

Mr. J.S.Saneta, Advocate
for respondents No.1 to 3 cross objectors.

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PANKAJ JAIN, J.(ORAL)

CM-18254-CII-2016

This is an application for condonation of delay of 58 days in filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in filing the appeal.

Application is allowed. Delay of 58 days in filing the appeal is condoned.

Main case

1 Insurer is in appeal. The issue relates to deduction of the compensation received by the claimants under Haryana Compassionate Assistance to the Dependents of

Deceased Government Employees Rules, 2006 (for short 2006 Rules) from the compensation awarded by the Tribunal under Motor Vehicles Act, 1988 (for short 'M.V.Act').

2 Claimants filed claim petition seeking compensation on account of death of Medh Singh @ Umed Singh. Medh Singh was working as Head Constable in Haryana Police. On the fateful day he was driving motor cycle and was on patrol when he was hit by truck driven by respondent No.4 in a rash and negligent manner. Umed Singh succumbed to his injuries suffered in the accident. Claimants, who are widow and minor children of the deceased, filed instant petition seeking compensation under M.V.Act.

3 The claim petition was contested by the owner, driver and the insurer of the offending vehicle.

4 Tribunal framed following issues :-

> *"1. Whether Med Singh @ Umed son of Harke Ram died in a road side accident on 12.2.2013 on account of rash and negligent driving of Truck bearing no.HR-37A-3622 by respondent no.1, as alleged in the petition? OPP.*
> *2.If issue no.1 is proved, whether the petitioners are entitled to compensation, if so, to what effect and from whom? OPP.*
> *3. Whether respondent no.1 was not holding a valid and effective driving licence on the date of accident? OPR.*
> *4. Relief."*

5 Issue No.1 was decided in favour of the claimants. While deciding issue No.2, insurer claimed that the family of the deceased having been granted financial aid under the 2006 Rules claimants are not entitled for full compensation and the same needs to be deducted. Tribunal while

considering the effect of the compensation payable to the claimants under the 2006 Rules observed as under :-

> ***"First Step***
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> *17. The certificate Ex.P3 reveals the deceased's date of birth as 10.08.1971 and date of superannuation as 31.08.2029. His actual age thus on the date of accident was around 42 years. PW2 Rajinder Singh has indicated in his deposition that family of deceased would receive full last drawn salary till the age of superannuation and such period works out to approximately 16 years. However, the family of deceased in the present case would not be entitled to receive full last drawn salary for 16 years because Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 'Compassionate Rules, 2006') prescribes that such compensation in respect of the family of an employee who at the time of his death had attained the age of thirty five years but had not attained the age of forty eight years, would be entitled to compassionate assistance for a maximum period of twelve years. So, by adding 12 years to the actual age of the deceased, his notional age comes to 54 years (42+12).*
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> ***Second Step***
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> *18. Notional age of 54 years now has to be made the basis for assessing the compensation as per judgment in **Sarla Verma's case (supra).** It was ruled in **Sarla Verma's case (supra)** that 30% increase in salary of the deceased should be added towards future prospects if the age of deceased is less than 50 years. Since the notional age of the deceased in the present case comes to 54 years, no increase towards future prospects is warranted and the compensation thus should be assessed considering the income of the deceased as Rs.25610/- per month.*
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> *19. The multiplier in respect of notional age of 54 years, per dictum of Sarla Verma's case (supra), would be 11. This multiplier per Saroj Devi's case (supra) should be broken into two parts. The first part should cover the number of years for which deceased would have been in service, taking the age of retirement to be 58 years, which in the present case would be '4' (58-54). The dependency should then be assessed For this part on the basis of assessed salary, which thus works*

out to Rs.12,29,280/- (25610 X 12 X 4). The remainder of multiplier i.e. "7" (11-4) should be applied in working out the compensation as pension period i.e. 50% of the last drawn salary as pension because the multiplier for the period beyond 58 years (the age of superannuation) cannot be applied on full salary period and has to be applied on the amount which the deceased would have drawn as pension after date of superannuation. The compensation thus calculated works out to Rs. 10,75,620/- (25610 X 50/100=12805 X 12 X 7). The total compensation payable to the claimants on account of loss of dependency accordingly works out to Rs.23,04,900/- (12,29,280+10,75,620).

20. Learned counsel for respondent no.3 has argued for deducting 1/3 amount of his assessed income towards personal expenses of the deceased for the purpose of calculating compensation. The argument cannot be accepted because no such deduction was made by the Hon'ble High Court in Saroj Devi's case (supra). It seems that deduction of 1/3rd amount was not made towards his personal expenses because the basis of income for calculating compensation was made without adding increase towards future prospects. So, the deduction, as argued by learned counsel for respondent no.3, cannot be allowed and the compensation of Rs.23,04,900/- calculated on base salary of Rs.25610/-, is payable to the claimants.

21.TheHon'ble Supreme Court in Smt. Sarla Verma's case (supra) has prescribed a uniform amount of Rs.10,000/- for loss of consortium, Rs.5,000/- for loss of estate and Rs.5,000/- towards funeral expenses. In a subsequent judgment reported as ***Kalpanaraj and others Vs. Tamil Nadu Transport Corpn.*** *(2014-3) P.L.R. 540 and Smt. Savita Vs. Binder Singh and others (2014-2) P.L.R. 724, the Hon'ble Court has awarded Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of estate and Rs.1,00,000/- towards loss of love and affection as also Rs.50,000/- for funeral expenses and costs of litigation. When these rulings are read in conjunction with Sarla Verma's case (supra), it would reveal that the Hon'ble Supreme Court has issued general guidelines in Sarla Verma's Case about awarding compensation under various heads whereas the subsequent rulings were not laying general principles for all cases involving assessment of* *compensation. The compensation under various heads in the latter rulings was assessed with the aim of calculating just and reasonable compensation in the facts and circumstances of the cases decided by those judgments. So, deviation from Sarla Verma's case (supra) in respect of amount of compensation for consortium, love of estate and funeral expenses cannot be made as a general rule.*

22. The age of deceased's widow in the present case is 39 years, per Adhar card Ex.P8 and both her children are minor. Considering the period they will now stand deprived of the company, love and affection of the deceased during their lifetime, the Tribunal, indeed, is of the considered opinion that the amount of consortium of Rs.50,000/- deserves to be awarded. An amount of Rs.5000/- as fixed in Sarla Verma's case (supra) is allowed to the claimants as compensation towards loss of estate/expectation of life. In addition thereto, the claimants are also awarded a compensation of Rs.10,000/- towards litigation expenses in view of the law propounded in Kalpanaraj's case (supra).

23. Sequel to the above discussion, the claimants are held entitled to a compensation of Rs.23,69,900/- (Rs.2304900/- + 50,000 + 5,000+10,000), payable jointly and severally by the respondents being the driver, registered owner and the insurer of offending truck. This issue is, thus, decided accordingly."

6 Learned counsel for the appellant contends that the findings recorded by the Tribunal while determining compensation are in teeth of law laid down by Supreme Court in the case of ***Reliance General Insurance Co. Ltd. Vs. Shashi Sharma &ors. 2016 ACJ 2723*** the amount received by the claimants under 2006 Rules needs to be deducted.

7 Per contra learned counsel for respondents No.1 /cross objectors submits that the ratio of law laid down by Supreme Court in ***Shashi Sharma's case supra*** has been further interpreted by Coordinate

Bench of this Court in the case of ***Kamla Devi and others Vs. Sahib Singh*** and others passed in FAO No.3064 of 2013 decided on 30.11.2017 and the award passed by the Tribunal is in consonance with the ratio of law laid down by this Court in ***Kamla Devi's case supra.***

8 I have heard learned counsel for the parties and have gone through records of the case.

9 The issue with respect to deduction of the amount of compensation received by employees in State of Haryana under the 2006 Rules stands decided by Supreme Court in ***Shashi Sharma's case supra*** observing as under :-

> *"22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 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 Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents 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 Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of*

2006 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 dependents 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, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents 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 dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello and Patricia Jean Mahajan's cases (supra)."

10 Coordinate Bench of this Court while interpreting the aforesaid provision in the case of ***New India Assurance Co., Ltd. Vs. Ajmero & ors. FAO No.2648 of 2016 decided on 31.07.2017*** deducted an amount of Rs.16,64,856/- from the compensation amount of Rs.29,20,672/- observing as under :-

*"**9.** Compensation awarded by the Tribunal for loss of consortium to the widow, loss of estate and funeral expenses is affirmed. The Tribunal has awarded an amount of Rs. 7 lakh for loss of love and affection to the widow and three sons of the deceased.*

***10.** Once the widow has been paid for loss of consortium, there is no justification for paying separate compensation for loss of love and affection to the widow. The three sons of the deceased were more than 20 years old. Counsel for the claimants has failed to cite any judgment of Hon'ble the Supreme Court wherein loss of love and affection to three major sons of a* *deceased to the tune of Rs. 6 to 7 lakh has been awarded. If compensation awarded by the Tribunal with regard to loss of love and affection is affirmed, it would be a bonanza for family of the deceased. In the light of age of three sons of the deceased, allowing an amount of Rs. 1.5 lakh (to be shared equally) for loss of love and affection, care and guidance of their father is reasonable."*

11 Similar are the observations made in the case of in the case of ***Kamla Devi ibid.*** In fact both the judgments have been authored by the same Coordinate Bench. The approach of this Court in ***Ajmero's case supra*** came up for consideration before the Supreme Court in the case of ***National Insurance Co. Ltd. Vs. Birender & ors, 2020 (1) RCR Civil 694.*** Supreme Court while reiterating ratio of law laid down by three Judges Bench in ***Shashi Sharma's case supra*** observed as under :-

> *"15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between L 1,00,000/- and L 1,50,000/- per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years."*

12 Supreme Court explicitly held that the view taken by High Court in ***Ajmero's*** case is a departure from the scheme envisaged by 2006 Rules and further observed as under :-

> *"16. The next issue is about the deduction of the amount receivable by the legal representatives of the deceased under the 2006 Rules from the compensation amount determined by the Tribunal in terms of the decision of three−Judge Bench of this Court in Shashi Sharma (supra). This Court, after analysing the relevant rules, opined as follows: −*
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> > *"23. Reverting back to Rule 5, sub−rule (1) provides for the period during which the dependants 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/licence fee. By virtue of sub− rule (4), an ex gratia assistance of Rs 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.*
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> > *24. …..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 1988 Act.*
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> > *25. 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 1988 Act. The claimants or dependants of the deceased government employee*

(employed by the 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 (the State) under Rule 5(1) of the 2006 Rules. In that, if the deceased employee was to survive the motor accident injury, he 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…..

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 Tri− bunal 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 v. Maharashtra SRTC, (1999) 1 SCC 90 and United India Insurance Co. Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 cases.*

27. A priori, the appellants must succeed only to the extent of amount receivable by the dependants of the deceased government employee in terms of Rule 5(1) of the 2006 Rules, towards financial assistance equivalent to the loss of pay and wages of the deceased employee for the period specified." (emphasis supplied)

The learned Judge of the High Court has, however, after adverting to the decision of the same High Court in Ajmero (supra), went on to observe that 50% of the amount receivable by the legal representatives of the deceased towards financial assistance under the 2006 Rules is required to be deducted from the compensation amount. In the relied upon decision, the same learned Judge had occasion to observe as follows: −

"… However, perusal of the judgment would reveal that the Court has not adverted to the issue that had the Rules of 2006 extending assistance to family of a deceased employee been not in existence, family would have been entitled to pension to the extent of 50% of the last drawn pay. As per the settled position

in law, the pensionary benefits available to family of a deceased employee are not amenable for deduction for computing loss of dependency. There is nothing on record suggestive of the fact that in addition to compassionate assistance under the Rules, family of the deceased is being paid pension till the age of superannuation. Rather Rule 5(2) of the 2006 Rules specifically denies family pension as per normal rules..."

(emphasis supplied)

17. The view so taken by the High Court is not the correct reading of the decision of three−Judge Bench of this Court in Shashi Sharma (supra) for more than one reason. First, this Court was conscious of the fact that under Rule 5(2) of the 2006 Rules, the family pension receivable by the family would be payable, however, only after the period, during which the financial assistance is received, is completed. In that context, in paragraph 24 of the reported decision, the Court clearly noted that the amount towards family pension cannot be deducted from the claim amount for determination of a just compensation under the Act. Further, the High Court has erroneously assumed that the family of the deceased would be entitled for family pension amount immediately after the death of the deceased employee. That is in the teeth of the scheme of the 2006 Rules, in particular Rule 5(2) thereof. The said Rules provide for financial assistance on compassionate grounds, as also, other benefits to the family members of the deceased employee and as a package thereof, Rule 5(2) stipulates that the family pension as per the normal rules would be payable to the family members only after the period of delivery of financial assistance is completed. The validity of this provision is not put in issue. Suffice it to say that the view taken by the High Court in Ajmero (supra) is a departure from the scheme envisaged by the 2006 Rules, in particular, Rule 5(2). That cannot be countenanced.

18. As a matter of fact, in the present case, the High Court committed manifest error in assuming that the respondent Nos. 1 and 2 would be eligible to receive financial assistance under the 2006 Rules. The eligibility to receive such financial *assistance has been spelt out in Rule 3 of the 2006 Rules read with the provision of Pension/Family Pension Scheme, 1964. It appears that major sons and married daughters are not included in the definition. However, we need not dilate on that aspect in the present proceedings any further. It has come in the evidence of Gobind Singh, Clerk in SDM Office (PW−1) that the legal representatives of the deceased have not submitted any request for getting financial assistance till he had deposed. Indeed, respondent No. 1, who had entered the witness box, did depose that they had applied for getting salary of their deceased mother. The fact remains that there is no clear evidence on record that respondent Nos. 1 and 2 are held to be eligible to get financial assistance or in fact, they are getting such financial assistance under the 2006 Rules. The High Court, therefore, instead of providing for deduction of the amount receivable by the legal representatives of the deceased on this count (under the 2006 Rules), from the compensation amount, should have independently determined the compensation amount and ordered payment thereof subject to legal representatives of the deceased filing affidavit/declaration before the executing Court that they have not received nor would they claim any amount towards financial assistance under the 2006 Rules, so as to become entitled to withdraw the entire compensation amount."*

13 In view of above, this Court finds that from combined reading of ratio of law laid down in ***Shashi Sharma's case supra and Birender's case supra,*** it is evident that wherever issue with respect to receipt of financial assistance by the claimants is raised in their petition seeking compensation on the account of death of the same person, Tribunals instead of providing for deduction of amount receivable under 2006 Rules from the compensation amount, should independently determine the compensation amount. It should be further ordered that the payment of the compensation

amount shall be subject to the legal representatives of the deceased filing affidavit/declaration before the Executing Court disclosing amount received towards financial assistance under 2006 Rules. On their filing of such declaration by way of affidavit, the Executing Court may release the compensation after deducting the amount so received.

14 Taking guidance from the ratio of law laid down by Supreme Court findings recorded by the Tribunal on issue No.2 are hereby set aside. Deceased is stated to be 41 years of age at the time of accident earning monthly salary of Rs.25,610/-. Another 25% needs to be added as future prospects in view of ratio of law laid down in ***National Insurance Co., Ltd., Vs. Pranay Sethi & ors., 2017(4) RCR (Civil) 1009.*** In view of ratio of law laid down in ***Sarla Verma Vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 569*** multiplier of 14 will be applicable keeping in view the age of the deceased. 1/4th deduction needs to be applied. All the three claimants will further be entitled for loss of consortium @ Rs.48,000/- each. They will further be entitled for Rs.18,000/- under the head of loss of estate each and also under the head of funeral expenses.

15 The findings on issue No.2 stand accordingly substituted. No other point has been argued. The claimants are further entitled for interest @7.5% per annum from the date of the institution of the petition till actual realization.

16 The Executing Court shall pay the aforesaid amount to the claimants subject to their filing affidavit disclosing the amount of compensation/financial assistance received by them under the 2006 Rules.

The amount so received by them shall be deducted from the total compensation awarded in the present petition.

17 Main appeal as well as cross objections stand disposed off accordingly.

18 Since the main case has been decided, the pending miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

13.11.2024
Pooja Sharma-I

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