
(2014) 08 P&H CK 0169
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 374 of 2012 (O and M)

Krishna and Others

APPELLANT

Vs

Ram Parkash and Others

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Citation : (2015) 3 RCR(Civil) 321

Hon'ble Judges : R.P. Nagrath, J.

Bench : Single Bench

Advocate : Vikram Punia, Advocate, for the Appellant

Final Decision : Allowed

Judgement

R.P. Nagrath, J.?The only ground on which the Tribunal has not considered the income of the deceased while awarding compensation is that under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short, 2006 Rules) the deceased was entitled to draw full amount of salary up to the age of superannuation. Learned Tribunal has observed as under:-

"20. PW3 Shri Kaptan Singh, Assistant Office of the SDO brought the salary record of deceased Daya Nand and stated that he was paid a sum of Rs. 10,591/- as salary for the month of May 2008. He proved the salary certificate Ex. P2. In cross-examination he clarified that there is a policy of Government of Haryana that if a person/employee has died prior to his/her retirement, in that eventuality the Government shall pay full salary to the dependents up to the age of retirement and dependents of deceased Daya Nand are also getting full salary from the date of his death. The witness was again examined as RW1 by the respondents then he stated that deceased Daya Nand was drawing monthly salary of Rs. 8829/-. After his death petitioner No. 1 is getting full monthly salary. She would get full salary upto the age of 58 years of deceased Daya Nand.

21. From the aforementioned evidence it comes out that the petitioners are not

going to suffer any loss of income due to death of Daya Nand as the petitioner No. 1 is getting full salary from the Department to be paid up to the age of retirement of her deceased husband. She will also get pension after the age of superannuation."

2. I have heard learned counsel for appellants, counsel for respondents and have perused the award passed by the Tribunal.

3. Learned counsel for appellants relied upon Reliance General Insurance Company Limited and Others Vs. Purnima and Others etc. etc., , a judgment of Division Bench of this Court, where the matter was referred in view of conflict of opinion. The question posed by the Division Bench was "Whether the compensation received from the government under 2006 Rules (or otherwise) is to be deducted from the total compensation. It was held by the Division Bench as under:-

"We, accordingly, hold that view taken in Saroj Devi's case (supra) is correct in law. Accordingly, the Insurance Companies shall not be entitled to the deduction of the amount given to the dependents under the Rules of 2006 while calculating compensation payable under the Motor Vehicles Act."

4. The principle of law held by this Court in Oriental Insurance Company Ltd. Vs. Saroj Devi and others, , is as under:-

"In the line of reasoning adopted by the Hon"ble Supreme Court, this Court declares that the Insurance Companies cannot get their liability excused or reduced because the deceased's family is also entitled to financial assistance from an alternative source which is accruing only by reason of the death of the deceased and not because he died in a motor vehicle accident. Drawing an analogy from the aforesaid observation of the Hon"ble Apex Court, when liability of the Insurance Company arises from a specific type of contract i.e. contract of indemnity, how can they be permitted to take benefit of compassionate assistance which results from employer-employee relationship and which is a right accruing by virtue of a welfare legislation (subordinate legislation).

In *Perry v. Cleaver*, (1970) A.C.I., it was observed that "it would be revolting to the ordinary man's sense of justice, and therefore contrary to public policy, that the sufferer should have his damages reduced so that he would gain nothing from the benevolence of his friends or relations or of the public at large." Having regard to this observation of the House of Lords, I find it strange to conclude that a gratuitous payment coming from a private source should have no bearing on the assessment of compensation but if the same comes though State, it should be taken into consideration

Still further, in any State, whether a welfare state or not, it is the primary responsibility of the Government to look after its citizens. Then whey, if the Government steps in to provide a benefit to the dependents of the deceased who was employed in the conduct its affairs and who had a role to play in the working

of the entire official machinery, should such a benefit be taken into consideration at all for reduction of damages suffered by the claimants of the deceased or the injured, for that matter. In my understanding, even the aforementioned observation of House of Lords includes the possibility of State assistance when it uses the term "public at large".

5. Otherwise also, the life of an earning member of the family has been lost in the accident. The family would always be deprived of the services of the earning family member.

6. The next question would be how much salary the deceased was drawing. PW-3 Kaptan Singh, Assistant in the office of SDO brought the salary record of the deceased. PW3 stated that the deceased received Rs. 10591/- as salary for the month of May, 2008 and proved salary certificate Ex. P-2. However, this witnesses was again examined as RW-1 by the respondent and stated that the deceased was drawing a salary of Rs. 8829/- p.m. Looking into this contradiction, learned counsel for the appellants fairly submits that the salary of the deceased may be considered at Rs. 8829/- for the purpose of awarding compensation.

7. As per the judgment of the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , 1/3rd is to be deducted towards personal expenditure of the deceased and thus loss of dependency would come to Rs. 5886/-. The deceased was about 55 years old at the time of accident. It is not disputed that as per the principle held in Sarla Verma's case (supra), multiplier of 9 should be applied for determining the compensation which comes to $5886 \times 12 \times 9 = \text{Rs. } 6,35,688/-$. The amount of Rs. 20,000/- out of the compensation awarded shall be deducted. The balance amount comes to Rs. 6,15,688/-.

8. The enhanced amount would carry interest @ 7.5% per annum from the date of filing of the claim petition till the date of realization. However, the appellants shall not be entitled for the interest of 202 days of delay in filing this appeal, which was otherwise condoned.

9. Apart from that appellant No. 1, being the widow of late Dayanand, is also awarded Rs. 80,000/- more towards the loss of consortium as per judgment of the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, For loss of love and affection, an amount of Rs. 65,000/- is awarded to appellants No. 2 to 4. An amount of Rs. 25,000/- should be awarded towards funeral expenses. The total amount, under these heads comes to Rs. 1,70,000/-. The above amount of Rs. 1,70,000/- shall carry interest @ 7.5% after expiry of 45 days from the date of receipt of certified copy of this order in case the payment is not made.

The appeal is allowed in the above terms.