

(2019) 05 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 4341 Of 2018 (O&M)

Rekha Devi And Others

APPELLANT

Vs

Shridhar N. Mukri And Others

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Haryana Compassionate Assistance to the Dependents Of Deceased Government
Employees Rules, 2006 — Rule 5, 5(1)

Citation : (2019) 05 P&H CK 0097

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Suresh Ahlawat, V. K. Garg

Final Decision : Disposed Off

Judgement

The award dated 19.1.2017 passed by the Motor Accident Claims Tribunal, Jind (for short, 'the Tribunal') has been assailed by the legal representatives of Subhash Chander seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The appellants are the widow, two minor children and mother of Subhash Chander.

The driver of Tata Sumo bearing registration No. KA-30-M-3214 (hereinafter described as 'offending vehicle'), owner and insurer (i.e. United India Insurance company Limited) of the offending vehicle have been arrayed as respondents No. 1 to 3 respectively.

The facts emanating from the record are that on 20.2.2015, Subhash Chander was going on a motorcycle bearing registration No. HR-31F/4328. The motorcycle was being driven by Sudhir. On the way, the motorcycle was struck by the offending vehicle. As a result of the impact, the riders of the motorcycle fell down and sustained injuries. Subhash Chander succumbed to the injuries.

In the claim petition, the claimants proved that the deceased was a Petty Officer in Indian Navy and was getting salary of Rs.35,354/- per month. The annual gross salary was Rs.4,36,248/-. Rs.7,304/- was deducted towards income tax and 50% future prospects were awarded. The Tribunal relying upon Ex. P21 deducted Rs.9,666/- per month taking it to be the financial assistance received from the Naval Department. Reliance was placed upon the decision of the Supreme Court in *Reliance General Insurance Co. Ltd. v. Shashi Sharma*, 2016(4) RCR (Civil) 569. The annual salary of the deceased after deduction of income tax and application of multiplier was Rs.6,43,416/-. Rs.1,15,992/- was deducted for ex-gratia payment and compensation was calculated by taking income of Rs.5,27,424/- per annum, 1/4th deduction for self expenses was made as the deceased was survived by four dependents. The age of the deceased was 39 years at the time of accident and thus multiplier of 15 was applied. The Tribunal awarded a sum of Rs.61,53,722/- alongwith interest @ 9% per annum. The amount awarded included Rs.1,00,000/- each for loss of consortium and for loss of love and affection. Rs.20,000/- was awarded for funeral expenses.

The Tribunal considering the facts and appreciating the evidence held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, owner and the insurer were held jointly and severally liable to pay the compensation.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants argues that the Tribunal erred in deducting the ex-gratia amount. The amount received was not financial assistance given to the dependents of the deceased but was a special family pension.

Learned counsel for the insurer defends the award and argues that the amounts awarded under the conventional heads are on the higher side and no amount is to be awarded for loss of love and affection.

The contention raised by learned counsel for the appellants that family pension cannot be deducted from salary deserves acceptance.

The Supreme Court in *Lal Dei and others v. Himachal Road Transport*, (2007)8 SCC 319 has held as under:

"4. It is contended by the learned counsel for the appellant that while calculating the dependency, the Motor Accident Claims Tribunal as well as the High Court committed an error in deducting the family pension amount. We find that the submission made by the counsel for the appellant is correct. The Motor Accident Claims Tribunal as well as the High Court could not have deducted the amount of family pension given to the family while calculating the dependency of the claimants. In the case of *Mrs. Helen C. Rebello and others v. Maharashtra State Road Transport Corpn.* and another reported in 1998(4) RCR(Civil) 177 : AIR 1998 page 3191 this Court has specifically dealt with this question and said that the family pension is earned by an employee for the benefit of his family in the

form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. There is no co-relation between the two and therefore, the family pension amount paid to the family cannot be deducted while calculating the compensation awarded to the claimants. In view of this the appeal is allowed. The order of deduction of the family pension is set aside. Accordingly, the appellants would be entitled for an amount of Rs. 10,27,000/- as compensation with interest at the rate of 9% from the date of the filing of the petition."

The Supreme Court reiterated its stand in *Vimal Kanwar v. Kishore Dan*, 2013(7) SCC 476, and held as under:

"The aforesaid issue fell for consideration before this Court in *Helen C. Rebello (Mrs) and others v. Maharashtra State Road Transport Corporation & Anr.*, 1998(4) R.C.R. (Civil) 177 : (1999) 1 SCC 90. In the said case, this Court held that :

Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction.

The following was the observation and finding of this Court :-

"35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have

no correlation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. When we seek the principle of loss and gain, it has to be on a similar and same plane having nexus, inter se, between them and not to which there is no semblance of any correlation. The insured (deceased) contributes his own money for which he receives the amount which has no correlation to the compensation computed as against the tortfeasor for his negligence on account of the accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury or death without making any contribution towards it, then how can the fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act he receives without any contribution. As we have said, the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

As per the law enunciated by the Supreme Court, no deduction of family pension is to be made.

In its recent decision in Civil Appeal Nos.4079-4081 of 2019 (Arising out of SLP (C) Nos. 742-744 OF 2019) titled as - National Insurance Company Ltd. v. Mannat Johal and others, decided on 23.4.2019, the Supreme Court after considering its earlier decisions in Reliance General Insurance Co. Ltd. v. Shashi Sharma, 2016 ACJ 2723 and Sebastiani Lakra v. National Insurance Company Ltd., 2019 ACJ 34 held that ex-gratia amount received by the claimants from the employer cannot be deducted. It was held as under:

"12. Taking up the question of ex gratia payment received by the claimants from the employer of the deceased, it is noticed that an amount of Rs. 3,21,801/- was paid by the employer to the claimants, being one year's gross salary of the deceased. While relying on the decision in Shashi Sharma, it is contended on behalf of the insurer that the ex gratia amount so received by the claimants is required to be deducted. Noticeable it is that in Shashi Sharma's case, a three-Judge Bench of this Court was dealing with the payment received by the legal heirs of the deceased in terms of Rule 5 of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 ('Rules of 2006') whereunder, on the death of a government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods specified in the Rules and after the said period, the family would be entitled to receive family pension. The family would also be entitled to retain the government accommodation for a period of one year in addition to payment of Rs. 25,000/- as ex gratia.

12.1 The aforesaid decision in Shashi Sharma has been explained and distinguished by another three-Judge Bench of this Court in Sebastiani Lakra (supra) in the following:-

"10. In Shashi Sharma's case, 2016 ACJ 2723 (SC), this court was dealing with the payments made to the legal heirs of the deceased in terms of rule 5(1) of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 'the said Rules'). Under rule 5 of the said Rules on the death of a government employee, the family would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee for periods set out in the Rules and after the said period the family was entitled to receive family pension. The family was also entitled to retain the Government accommodation for a period of one year in addition to payment of Rs. 25,000 as ex gratia. In this case, the three-Judge Bench adverted to the principles laid down in Helen C. Rebello's case 1999 ACJ 10 (SC), followed in Patricia Jean Mahajan's case 2002 ACJ 1441 (SC), and came to the conclusion that the decision in Vimal Kanwar's case 2013 ACJ 1441 (SC), did not take a view contrary to Helen C. Rebello or Patricia Jean Mahajan cases (supra). The following observations are relevant:

"(12) The principle expounded in this decision in Helen C. Rebello's case that the application of general principles under the common law to estimate damages cannot be invoked for computing compensation under the Motor Vehicles Act. Further, the 'pecuniary advantage' from whatever source must correlate to the injury or death caused on account of motor accident. The view so taken is the correct analysis and interpretation of the relevant provisions of the Motor Vehicles Act of 1939, and must apply proprio vigore to the corresponding provisions of the Motor Vehicles Act, 1988. This principle has been restated in the subsequent decision of the two-Judge Bench in Patricia Jean Mahajan's case, 2002 ACJ 1441 (SC), to reject the argument of the insurance company to deduct the amount receivable by the dependants of the deceased by way of 'social security compensation' and 'life insurance policy'."

However, while dealing with the scheme the court held that applying a harmonious approach and to determine a just compensation payable under the Motor Vehicles Act it would be appropriate to exclude the amount received under the said Rules under the head of 'pay and other allowances' last drawn by the employee. We may note that on principle this court has not disagreed with the proposition laid down in Helen C. Rebello or in Patricia Jean Mahajan (supra), but while arriving at a just compensation, it had ordered the deduction of the salary received under the statutory Rules."

12.2. In the present case too, it has not been shown if the ex gratia amount received by the claimants had been under any Rules of service and would be of continuous assistance, as had been the case in Shashi Sharma (supra) as per the Rules of 2006 considered therein. In an overall analysis and with reference to the decision in Sebastiani Lakra (supra), we are clearly of the view that the decision in Shashi Sharma would not apply to the facts of the present case and no deduction in the amount awarded by the High Court appears necessary."

From a perusal of Ex. P21, it is clear that the amount of Rs.9666/-per month

being received was not financial assistance under any rule but was a special family pension to the heirs of the deceased hence the same cannot be deducted for calculating compensation.

As the quantum of compensation is being re-visited, it would be appropriate that the amounts under the conventional heads are awarded in consonance with the decision of the Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, AIR 2017 SC 5157. The claimants are entitled to Rs.15,000/- each for funeral expenses and for loss of estate and Rs.40,000/- is awarded to widow for loss of consortium.

In view of the above discussion, the compensation is re-calculated as under:

Particulars

Amount awarded in Rs.

Annual salary after deduction of income tax

4,28,944/-

50% future prospects

2,14,472/-

Total

64,34,16/-

1/4th deduction for self expenses

1,60,854/-

Annual dependency

4,82,562/-

Multiplier of 15

72,38,430/-

Conventional heads

70,000/-

Total

73,08,430/-

The award dated 19.1.2017 is modified to the extent that amount awarded of Rs.61,53,722/- by the Tribunal is enhanced to Rs.73,08,430/-.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till its realisation.

The appeal is disposed of in the aforesaid terms.