

Before Arun Kumar Tyagi, J.

KANTA DEVI AND ANOTHER—Petitioner

versus

RAM KUMAR AND ANOTHER—Respondents

FAO No. 1260 of 2019

September 17, 2020

Motor Vehicle Act, 1988—Ss. 140, 166—Death case—Deceased, 53 years old, employed as Khalasi in Delhi Development Authority (DDA)—Accident occurred in Samalkha, Haryana—Tribunal held the driver negligent and the Insurance liable to pay the compensation to the claimants, widow and son—The compensation amount was assessed by applying multiplier of 11, adding 15% income towards future prospects, and awarding due amount under conventional heads—However, an amount of Rs.26,67,168/- was deducted towards grant of financial assistance for 7 years under the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2006—Appeal filed on the plea that the deceased was not a Haryana Government employee, and financial assistance was not admissible to the claimant—Held, since the deceased was employed with the DDA, which had not enacted any rules similar to the 2006 Haryana Rules for financial assistance, the Tribunal's observation regarding deduction of compassionate financial assistance were wrong—Presiding Officer of the Tribunal was called to explain the basis of wrong deduction—Further held, our legal system acknowledges fallibility of judges and in view thereof provides appeals and revisions—A judge who has not committed any error is yet to be born—No action is required to be taken against a judicial officer for bona fide error, unless there are clear cut allegations of misconduct, extraneous influences, gratification of any kind, etc. —Disciplinary proceedings are not to be initiated merely on the basis of a wrong order passed—On facts, no complaint or other material against the Judicial Officer concerned to show the findings were animated by mala fides or extraneous considerations to warrant any reference for disciplinary proceedings—Since erroneous orders passed by Judicial Officers may result in miscarriage of justice, it will be appropriate the Officers are periodically sensitized for preventing recurrence of the errors committed by them—Chandigarh Judicial Academy was directed to periodically compile cases involving such

erroneous orders and point out the errors committed to the Officers during Induction/Refresher Training Courses organized for them.

Held, that However, in the present case, deceased-Balwan Singh was employed as Khalasi in Delhi Development Authority, Delhi. The Delhi Development Authority, Delhi has not enacted any rules similar to Haryana 2006 Rules extending compassionate financial assistance to the dependents of its deceased employees by payment of sum equal to pay and allowances last drawn by the deceased employee. In the absence of any such rules the appellants/claimants were not entitled to any compassionate financial assistance by payment of sum equal to the pay and other allowances last drawn by the deceased for seven years or any other period. PW-3 Chander Bhan, Baildar, Office of Xen, Delhi has admitted in his cross-examination that claimant No.1-widow of deceased-Balwan Singh was getting amount of Rs.13,660/- per month as family pension from the department. Payment of pension to appellant/claimant No.1 widow of deceased employee Balwan Singh also contradicts and thereby disproves both entitlement of the appellants/claimants to payment as well as actual payment of any such compassionate financial assistance by the employer to the appellants/claimants. The observations made by Hon'ble Supreme Court in regarding deduction of the amount of compassionate financial assistance out of the amount of compensation were not applicable to the facts of the present case. The observations made by the Tribunal in para No.24 and 25 of its judgment/award were wrong. It follows that the Tribunal wrongly deducted amount of Rs.26,67,168/- out of the compensation amount of Rs.35,56,069/- payable to the appellants/claimants and the impugned award suffers from material illegality and deserves to be modified in this regard.

(Para 22)

Further held, that Evidently, the observations in para No.24 and 25 of the impugned award were made by the learned Presiding Officer of the Tribunal on erroneous assumption of facts as to the deceased, who was resident of Haryana, being Haryana Government employee. Our legal system acknowledges the fallibility of the judges and in view thereof provides for appeals and revisions. (*See K.P. Tiwari versus State of M.P. : 1994 supp. (1) SCC 540*). To err is human and no one is infallible. A Judge who has not committed any error is yet to be born. (*See Amar Pal Singh versus State of U.P. (SC) : 2012 (3) R.C.R. (Civiol) 963 and In the matter of "K" a*

Judicial Officer (2001) 3 SCC 54). No action is required to be taken against any judicial officer for bona fide error. Unless there are clear cut allegations of misconduct, extraneous influences, gratification of any kind etc., disciplinary proceedings are not to be initiated merely on the basis that a wrong order has been passed by the Judicial Officer. (See **Kashi Nath Roy versus State of Bihar, 1996(2) RCR (Criminal) 340 and Krishna Prasad Verma versus State of Bihar and others : 2019 (10) SCC 640**). The role of superior courts is like a friend, philosopher and guide of the subordinate judiciary and the approach of the superior courts has to be correctional. (See **In the matter of "K" a Judicial Officer (2001) 3 SCC 54**). In the present case there is no complaint or any other material to show that the findings were animated by any mala fides or extraneous considerations so as to warrant any reference for disciplinary proceedings against the learned Presiding Officer of the Tribunal on Administrative side.

(Para 23)

Further held, that however, before parting with this appeal it may be observed that sometimes erroneous orders with errors in fact or law are passed by judicial officers. Such orders may result in grave miscarriage of justice in case of not filing of appeal/revision against the same for interference by the Appellate/Revisional Court. It will be appropriate that the Judicial Officers are periodically sensitized for preventing recurrence of errors committed by them and avoiding errors frequently committed by other Judicial Officers. The Chandigarh Judicial Academy, Chandigarh is directed to periodically compile cases involving such erroneous orders passed by Judicial Officers by obtaining the requisite information from Registrar Vigilance or Registrar Judicial of this Court and the concerned District and Sessions Judges and point out the errors committed to the Judicial Officers during the Induction/Refresher Training Courses organized for them while making dedicated efforts of not disclosing the particulars of the concerned Judicial Officers and the cases involved, although it may not be possible to maintain absolute secrecy about the same in view of the reporting of judgments of this Court and uploading of the orders on the website of this Court as well as the concerned District Courts.

(Para 27)

Ashit Malik, Advocate, *for the appellants*.

Presence of respondent No.1 considered unnecessary.

Paul S. Saini, Advocate, for respondent No.2-Insurance Company.

ARUN KUMAR TYAGI, J.

(1) The claimants-Kanta Devi (widow) and Gaurav Kumar (son) of deceased-Balwan Singh have filed the present appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal') vide award dated 31.10.2018 passed in **MACT Case No.RBT-82 of 2017 titled as 'Kanta Devi and another Vs. Rana Kumar and another'** on account of death of Balwan Singh due to injuries suffered in a motor vehicle accident which took place on 05.03.2017 in the area of Samalkha.

(2) The claimants filed the above-said claim petition for award of compensation under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') on the averments that on 05.03.2017 deceased-Balwan Singh and his bother-in-law Mahabir Singh were coming from Delhi to Village Garhi Sikanderpur, Police Station Model Town, Panipat on a motorcycle. At about 4:00 p.m. when they reached near Petrol Pump on G.T. Road, Samalkha, suddenly a pickup bearing Registration No.HR-67A-8312 driven by its owner respondent No.1 at very high speed in rash and negligent manner came from behind and hit their motorcycle due to which deceased-Balwan Singh fell on the road whereas Mahabir Singh fell on Katcha side of the road and suffered multiple injuries. Balwan Singh was taken to Park Hospital, G.T. Road, Panipat where he succumbed to the injuries. FIR No.157 dated 07.03.2017 was registered under Sections 279 and 304-A of the Indian Penal Code, 1980 in Police Station Samalkha, District Panipat. The deceased was aged about 53 years and was earning Rs.35,000/- per month by working as Khalasi in Delhi Development Authority, Delhi. The claimants being dependents and legal representatives of the deceased are entitled to award of compensation for his death. The claimants accordingly prayed for award of compensation of Rs.1 crore with costs and interest at the rate of 24% per annum against respondent No.1-owner/driver and respondent No.2- insurer jointly and severally.

(3) On notice, the claim petition was contested by the respondents. In his written statement respondent No.1 took preliminary objections as to suppression of true and material facts, non-joinder and mis-joinder of necessary parties, want of locus standi

etc., denied the accident and asserted liability of respondent No.2-insurer in the eventuality of the claim petition being allowed. In its written statement respondent No.2 took preliminary objections as to non-maintainability, collusion, respondent No.1-owner/driver having no valid and effective driving licence at the time of the accident and breach of the terms and conditions of the insurance policy by respondent No.1-owner/driver and the accident having taken place due to negligence of the deceased/driver of the motor cycle. Respondent No.2 also controverted the material averments made in the petition and denied its liability.

(4) The Tribunal framed the issues and recorded the evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties the Tribunal held that Balwan Singh died due to injuries suffered in accident caused by rash and negligent driving of pick up bearing registration No.HR-67A-8312 by respondent No.1 who had valid and effective driving licence. The Tribunal held the claimants to be entitled for payment of compensation for death of Balwan Singh. The Tribunal held the deceased to be aged 53 years, assessed his monthly income as Rs.35,139/-, added 15% of the income towards future prospects, deducted 1/3rd towards personal expenses of the deceased, applied multiplier of 11 and out of calculated amount of Rs.35,56,069/- deducted amount of Rs.26,67,168/-towards grant of financial assistance at the rate of last drawn pay and allowances of the deceased for seven years. To the balance amount of Rs.8,88,901/- the Tribunal added amount of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards transportation and last rites expenses and amount of Rs.15,000/-towards loss of estate and awarded total compensation of Rs.9,58,901 with costs and interest at the rate of 7.5% from the date of filing of the petition till realization payable by the respondents jointly and severally.

(5) Feeling aggrieved, the claimants have filed present appeal challenging deduction of amount of Rs.26,67,168/- and seeking enhancement of the compensation awarded.

(6) After hearing learned Counsel for the parties, the appeal was allowed on 31.07.2020 but before the judgment was signed it transpired that some important aspects of the case had not been referred to, on which the order was recalled before signing of the judgment and the case was re-listed for hearing.

(7) I have heard arguments addressed by learned Counsel for

the parties and have gone through the record.

(8) It may be observed at the very outset that in the present case, the findings of the Tribunal as to Balwan Singh having died due to injuries suffered in accident caused by rash and negligent driving of pickup bearing registration No.HR-67A-8312 by respondent No.1 owner/driver, respondent No.1 owner/driver having valid and effective driving licence, the claimants being dependents and legal representatives of the deceased, and entitlement of the claimants and joint and several liability of respondents No.1 and 2 for payment of compensation for death of Balwan Singh have not been challenged by the respondents by filing any appeal or cross-objections. Even otherwise the same being based on proper appreciation of the evidence on record are not liable to be interfered with.]

(9) Learned Counsel for the appellants/claimants has made two fold submissions. In the first place learned Counsel for the appellants/claimants has argued that deceased-Balwan Singh was employed as Khalasi in Delhi Development Authority, Delhi. The Delhi Development Authority, Delhi has not framed any rules similar to the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 'Haryana 2006 Rules') extending compassionate assistance to the dependents of its deceased employees by payment of pay and allowances at the rate of last drawn by the deceased employee. Appellant/claimant No.1 is getting amount of Rs.13,660/- per month as family pension from the department as admitted by PW-3 Chander Bhan, Baildar, Office of Xen, Delhi in his cross examination. Observations made by the Tribunal in para No.24 of its judgment as to payment of salary to the dependents of the deceased- Balwan Singh for the next seven years are wrong and the Tribunal has wrongly deducted amount of Rs.26,67,168/- out of the compensation amount payable to the appellants/claimants. Observations made by Hon'ble Supreme Court in *Reliance General Insurance Company Limited versus Shashi Sharma and others*¹ relied by the Tribunal were not applicable to the facts of the present case. The appellants are entitled to payment of the compensation amount without deduction of amount of Rs.26,67,168/- out of the compensation amount payable to the appellants/claimants. Learned Counsel for the appellants/claimants has argued in the next

¹ IV (2016) ACC 340; 2016(4) RCR (Civil) 569

place that in view of the avocation of the deceased and services rendered by him multiplier higher to 11 ought to have been applied by the Tribunal. The Tribunal has awarded meager compensation towards consortium, last rites and loss of estate and has not awarded any compensation towards loss of love and affection and filial consortium. Learned Counsel for the appellants/ claimants has accordingly prayed that the impugned award may be modified and the compensation awarded by the Tribunal may be enhanced.

(10) On the other hand, so far as the first limb of arguments of learned Counsel for the appellants/claimants is concerned, learned Counsel for the respondent No.2-Insurance Company has not disputed the factual and legal position and fairly conceded that the Delhi Development Authority did not have any rules similar to Haryana 2006 Rules; the appellants/claimants did not get any similar compassionate assistance; appellant/claimant No.1 was merely getting pension and observations in *Shashi Sharma's case (Supra)* were not applicable and has expressed no objection to modification of award in this regard. However, learned Counsel for the respondent No.2-Insurance Company has vehemently opposed second limb of arguments of learned Counsel for the appellants/claimants and submitted that the Tribunal applied the correct multiplier and awarded appropriate amounts under the heads of loss of consortium, last rites and loss of estate which are not liable to be enhanced. Learned Counsel for the respondent No.2 Insurance Company has further argued that the Tribunal wrongly included deductions which were being made from salary of the deceased in assessment of income of the deceased and did not make any deduction towards income tax and the amount awarded may be appropriately reduced and award may be modified accordingly.

(11) In the present case deceased-Balwan Singh was employed as Khalasi in Delhi Development Authority, Delhi and as testified by PW-3Chander Bhan, Baildar, Office of Xen, Delhi deceased-Balwan Singh was getting salary of Rs.35,139/- at the time of his death which testimony of PW-3 Chander Bhan is supported by salary certificateEx.P4.

(12) By a catena of judicial precedents it is now well settled that perks and allowances payable to the deceased employee benefiting him/his family members have to be included in computation of his monthly income and amounts deducted on account of HRA, CCA, Medical Allowance, EPF, GIS, LIC, re-payment of loan etc. are not

liable to be excluded in such computation of his monthly income. Reference in this regard may be made to *Mrs. Helen C. Rebello versus Maharashtra State Road Transport Corporation*²; *United India Insurance Co. versus Patricia Jean Mahajan*³; *National Insurance Company Ltd. versus Indira Srivastava and others*⁴; *Shyamwati Sharma and others versus Karam Singh and others*⁵ and *Ranjana Prakash versus Divisional Manager and another*⁶. The Tribunal was required to make statutory deduction of income tax from gross salary of the deceased for assessment of his income. Reference in this regard may be made to the observations in *National Insurance Company Ltd. versus Indira Srivastava and others*⁷; *Shyamwati Sharma and others versus Karam Singh and others*⁸ and *Ranjana Prakash versus Divisional Manager and another*⁹. The deceased had total income of Rs.4,21,668/- during the assessment year 2017-18. As per rates of personal income tax for the assessment year 2017-18, no income tax was payable on income upto Rs.2,50,000/-. Rebate upto Rs.1,50,000/- was permissible under Section 80C of the Income Tax Act. After such rebate income tax of Rs.2,200/- at the rate of 10% on rounded off taxable income of Rs.22,000/- was payable but in view of Section 87 of the Income Tax Act, rebate of Rs.5,000/- was admissible in case of taxable income being less than Rs.5,00,000/-. Therefore, no income tax was payable and the Tribunal did not commit any error in not making any deduction from income of the deceased towards incometax.

(13) The deceased is proved by the evidence on record to be aged 53 years at the time of his death. Since, the deceased was permanent Government employee addition of 15% was required to be made and was rightly so made by the Tribunal to the income of the deceased towards future prospects in view of the observations made by Hon'ble Supreme Court in para No.61(iii) of its judgment in *National Insurance Company Limited versus Pranay Sethi and*

² 1998(4) R.C.R.(Civil) 177

³ 2002(3) R.C.R.(Civil) 534 : 2002 (6) SCC 281

⁴ 2008 (1) RCR (Civil) 359

⁵ 2010 (3) RCR (Civil) 741(SC)

⁶ 2011 (4) RCR (Civil) 218

⁷ 2008 (1) RCR (Civil) 359

⁸ 2010 (3) RCR (Civil) 741(SC)

⁹ 2011 (4) RCR (Civil) 218

*others*¹⁰. When so added income of the deceased at the time of his death comes to Rs.35,139 x 12 = 4,21,668 + (15%) 63,250 = Rs.4,84,918/-.

(14) In view of the number of dependents on the deceased being two (claimants widow and son) and observations made by Hon'ble Supreme Court in para No.14 of its judgment in *Smt. Sarla Verma versus Delhi Transport Corporation*¹¹, 1/3rd of the income of the deceased was required to be deducted and was rightly deducted by the Tribunal towards his personal expenses. On deduction of 1/3rd of the income of the deceased towards his personal expenses annual dependency of the claimants on the deceased comes to Rs.4,84,918/- minus (1/3rd) Rs.1,61,639/- = Rs.3,23,279/-

(15) Hon'ble Supreme Court observed in para No.61(vii) of its judgment in *Pranay Sethi's case (Supra)* that the age of the deceased should be the basis for applying the multiplier. In view of observations made by Hon'ble Supreme Court in para No.21 of its judgment in *Sarla Verma's case (Supra)* and age of the deceased being 53 years, multiplier of 11 was applicable. Even though, the deceased being aged 53 years would have retired after seven years on attaining the age of 60 years but in view of the observations made by Hon'ble Supreme Court in *Puttamma and others versus K.L. Narayana Reddy and another*¹² there cannot be any application of split multiplier of 7 and 4 to split income of deceased as assessed for 7 years and half of the same for 4 years and multiplier of 11 has to be applied to income of the deceased at the time of his death as assessed. When multiplier of 11 is applied to annual dependency of Rs.3,23,279 of the claimants on the deceased, compensation for loss of dependency of the claimants on the deceased comes to Rs.3,23,279 x 11 = Rs.35,56,069/-

(16) In *Pranay Sethi's case (Supra)*, while answering the reference on **31.10.2017** Hon'ble Supreme Court observed in para No.61 (viii) of its judgment that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. In the said case, Hon'ble Supreme Court further observed that the aforesaid amounts should be enhanced at the rate of 10% in every

¹⁰ 2017 (4) R.C.R. (Civil) 1009

¹¹ 2009 (3) R.C.R. (Civil) 77

¹² 2014(1) RCR (Civil) 443

three years. In that case no separate amount was ordered to be payable for loss of love and affection. In the present case the accident took place on 05.03.2017 and the amounts under conventional heads is not liable to any change. In *Magma General Insurance Company Limited versus Nanu Ram @ Chuhru Ram and others*¹³ Hon'ble Supreme Court clarified that in legal parlance 'consortium' is compendious term which encompasses 'spousal consortium', 'parental consortium' and 'filial consortium' and awarded compensation of Rs.40,000/- each for loss of filial consortium to father and sister of the deceased. However, the Bench observed in para No.8.7 of its judgment that the amount of compensation to be awarded for loss of consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in *Pranay Sethi's case (Supra)* under which total amount of Rs.70,000/- is payable under the above referred conventional heads. In view of the above judicial precedents, the Tribunal rightly awarded amount of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate to the appellants claimants.

(17) It may be observed here that pension payable to widow of the deceased is not liable to be deducted from the amount of compensation payable to the legal representatives of the deceased for loss of dependency. Reference in this regard may be made to *Vimal Kanwar and others versus Kishore Dan and others*¹⁴ and *Sebastiani Lakra and others versus National Insurance Company Ltd. and another*¹⁵. Similarly, any ex gratia amount paid by the employer to widow of the deceased is not deductible out of the compensation payable to his legal representatives. Reference in this regard may be made to *Municipal Corporation and another versus Smt. Ajit Kaur and others*¹⁶.

(18) In the present case the Tribunal, by referring to Haryana 2006 rules and relying on the observations made by Hon'ble Supreme Court in *Shashi Sharma's case (Supra)* deducted amount of Rs.26,67,168/- out of the compensation amount of Rs.35,56,069/- on the ground that salary with allowances at the rate of Rs.31,752/-

¹³ 2018 (4) R.C.R. (Civil) 333

¹⁴ 2013 (2) RCR (Civil) 945

¹⁵ 2018 (4) RCR (Civil) 837

¹⁶ 2008 (3) RCR (Civil) (PHHC) 29

will be payable to the appellants/claimants dependents of the deceased-Balwan Singh for the next seven years. The relevant paras of the award passed by the Tribunal are reproduced as under:-

“23. In view of law laid down by the Hon’ble Apex Court in Reliance General Insurance Company Limited Vs. Shashi Sharma and others (supra) the amount received by the dependents of the deceased Balwan Singh, towards the financial assistance equivalent to the loss of pay of the deceased for the specified period is liable to be deducted from the total amount of compensation.

24. As discussed above, deceased Balwan Singh was 53 years of age. Therefore, the family members of deceased Balwan Singh would continue to receive as family assistance in a sum of pay and other allowances which was last drawn by deceased Balwan Singh for a period of 7 years. As per salary statement Ex.P4, deceased Balwan Singh was getting a sum of Rs.35,139/- per month as salary. However, after his death, the personal allowances will not be paid to the family members of deceased Balwan Singh. A perusal of last pay slip Ex.P4 reveals that deceased was getting HRA of Rs.3,207/-, cycle allowance of Rs.90/- and washing allowance of Rs.90/-, which comes to Rs.3,387/- and this amount is not payable to the dependent of deceased Balwan Singh. Therefore, the total financial assistance in the form of ex-gratia given to the family of the deceased by the Government comes to Rs.31,750/- (35139 – 3387) per month or Rs.3,81,024/- per annum (31752 x 12), which will be paid to the dependents of deceased Balwan Singh for the next seven years. Therefore, the total amount comes to Rs.26,67,168/- (381024 x 7). Accordingly, the claimants are entitled to compensation of Rs.8,88,901/- (3556069 – 2667168) on account of loss of dependency.”

(19) In view of submission of learned Counsel for the appellants that no such salary and allowances were payable to the dependents of the deceased and only pension was paid to them as permissible under the rules and the observations made in para No.24 of the judgment were wrong the correctness of which factual averments was not disputed by learned Counsel for respondent No.2-Insurance Company, vide order dated 28.08.2020 explanation of the learned Presiding Officer of the Tribunal was called in respect of the

observations made in para No.24 of the judgment and also the material on the basis of which the same were made.

(20) In compliance of order dated 28.08.2020 the learned Presiding Officer of the Tribunal has submitted his explanation dated 14.09.2020 and the relevant part of the same is reproduced as under:-

“I have the honour to submit that in MACT case titled Kanta Devi & Anr Vs. Rana Kumar & Anr decided by the undersigned on 31.10.2018, deduction was made while relying upon case law titled “Reliance General Insurance Company Limited Vs. Shashi Sharma and others IV(2016) ACC 340 (SC)” and notification No.G.S.R.19/Const./Art/309/2006 of Haryana Government, General Administration Department dated 01.08.2006 and criteria for financial assistance has been mentioned therein as under:-

5.(1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim.

(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years;

(b) for a period of twelve years or till the date the employee would have retired from Government Service on attaining the age of superannuation whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years.

It is further submitted that as per last pay slip Ex.P1, deceased was getting a sum of Rs.35,139/- per month as salary out of which Rs.3,207/- HRA, Rs.90/- cycle allowance and Rs.90/- washing allowance totalling Rs.3,387/- were deducted and total financial assistance in the form of ex-gratia given to the family of the deceased comes to Rs.31,752/- which will be paid to the dependents of the deceased Balwan Singh for the next seven years.

It is further submitted that no other case law or rules have

been produced/brought into the notice of the undersigned by either of the parties at the time of arguments.”

(21) Under Rule 5(1) of Haryana 2006 Rules on the death of a Government employee the family of the deceased employee is entitled to continue to receive as financial assistance a sum equal to the pay and other allowances last drawn by the deceased employee in the normal course without raising a specific claim for fifteen years if the deceased employee at the time of his death had not attained the age of thirty-five years; for twelve years or till the date of retirement on attaining the age of superannuation whichever is less if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years and for seven years or till the date of retirement on attaining the age of superannuation whichever is less if the deceased employee had at the time of his death attained the age of forty-eight years. Under Rule 5(2) of Haryana 2006 Rules the family will be eligible to receive family pension as per the normal rules only after the period during which the family receiving the financial assistance is completed. In *Shashi Sharma's case (Supra)* Hon'ble Supreme Court held that the amount received or receivable by the dependents of the deceased Government employees under Haryana 2006 Rules equal to pay and other allowances last drawn by the deceased Government employees will be liable to be excluded from the compensation payable to them under the M.V. Act, 1988.

(22) However, in the present case, deceased-Balwan Singh was employed as Khalasi in Delhi Development Authority, Delhi. The Delhi Development Authority, Delhi has not enacted any rules similar to Haryana 2006 Rules extending compassionate financial assistance to the dependents of its deceased employees by payment of sum equal to pay and allowances last drawn by the deceased employee. In the absence of any such rules the appellants/claimants were not entitled to any compassionate financial assistance by payment of sum equal to the pay and other allowances last drawn by the deceased for seven years or any other period. PW-3 Chander Bhan, Baildar, Office of Xen, Delhi has admitted in his cross-examination that claimant No.1-widow of deceased-Balwan Singh was getting amount of Rs.13,660/- per month as family pension from the department. Payment of pension to appellant/claimant No.1 widow of deceased employee Balwan Singh also contradicts and thereby disproves both entitlement of the appellants/claimants to payment as well as actual payment of any such

compassionate financial assistance by the employer to the appellants/claimants. The observations made by Hon'ble Supreme Court in regarding deduction of the amount of compassionate financial assistance out of the amount of compensation were not applicable to the facts of the present case. The observations made by the Tribunal in para No.24 and 25 of its judgment/award were wrong. It follows that the Tribunal wrongly deducted amount of Rs.26,67,168/- out of the compensation amount of Rs.35,56,069/- payable to the appellants/claimants and the impugned award suffers from material illegality and deserves to be modified in this regard.

(23) Evidently, the observations in para No.24 and 25 of the impugned award were made by the learned Presiding Officer of the Tribunal on erroneous assumption of facts as to the deceased, who was resident of Haryana, being Haryana Government employee. Our legal system acknowledges the fallibility of the judges and in view thereof provides for appeals and revisions. (*See K.P. Tiwari versus State of M.P.*¹⁷). To err is human and no one is infallible. A Judge who has not committed any error is yet to be born. (*See AmarPal Singh versus State of U.P. (SC)*¹⁸ and *In the matter of "K" a Judicial Officer*¹⁹). No action is required to be taken against any judicial officer for bona fide error. Unless there are clear cut allegations of misconduct, extraneous influences, gratification of any kind etc., disciplinary proceedings are not to be initiated merely on the basis that a wrong order has been passed by the Judicial Officer. (*See Kashi Nath Roy versus State of Bihar*²⁰ and *Krishna Prasad Verma versus State of Bihar and others*²¹). The role of superior courts is like a friend, philosopher and guide of the subordinate judiciary and the approach of the superior courts has to be correctional. (*See In the matter of "K" a Judicial Officer*²²). In the present case there is no complaint or any other material to show that the findings were animated by any mala fides or extreme considerations so as to warrant any reference for disciplinary proceedings against the learned Presiding Officer of the Tribunal on Administrative side.

¹⁷ 1994 Supp. (1) SCC 540

¹⁸ 2012 (3) R.C.R.(Civil) 963

¹⁹ (2001) 3 SCC 54

²⁰ 1996(2) RCR (CrI.) 340

²¹ 2019(10) SCC 640

²² (2001) 3 SCC 54

(24) In the present case, the Tribunal directed the payment of compensation amount with interest at the rate of 7.5% per annum from the date of filing of the petition till realization of the whole amount. In *Abati Bezbaruah versus Deputy Director General, Geological Survey of India and another*²³ Hon'ble Supreme Court noticed that varying rate of interest is being awarded by the Tribunals, High Courts and Hon'ble Supreme Court and held that the rate of interest must be just and reasonable depending on the facts and circumstances of the case and should be decided after taking into consideration relevant factors like inflation, change in economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, loss of enjoyment of life etc. The above said judgment was followed in *Puttamma's case (Supra)*. In view of the observations in above referred judicial precedents, rate of inflation, change in economy, R.B.I.'s lending rate of interest, rate of interest allowed by Nationalized Banks on fixed deposit receipts and other relevant factors, direction by the Tribunal for payment of interest at the rate of 7.5% per annum cannot be said to be unjust/illegal.

(25) It follows from the above discussion that claimants are entitled to payment of compensation of Rs.36,26,069/- with costs and interest at the rate of 7.5% per annum from the date of filing of the petition till realization. The amount of Rs.9,58,901/- awarded to the claimants by the Tribunal shall be liable to be deducted from the above- said amount. Out of the enhanced amount of Rs.26,67,168/-, amount of Rs.20,67,168/- shall be payable to claimant No.1-widow and amount of Rs.6,00,000/- shall be payable to claimant No.2 son of the deceased. Respondent No.2-Insurance Company is directed to pay the above said amounts by crediting the same into the accounts of the appellants/claimants (particulars of which shall be furnished by learned counsel for the appellants/claimants to learned counsel for respondent No.2-Insurance Company within ten days from receipt of copy of this order) through RTGS or any other digital mode within one month from the date of receipt of particulars of the accounts of the appellants/claimants. On such credit, appellants/claimants shall be entitled to withdraw the amounts credited to their respective accounts.

(26) The appeal is accordingly allowed with costs in terms of the above said modifications of the award dated 31.10.2018.

²³ (2003) 3 SCC 148

(27) However, before parting with this appeal it may be observed that sometimes erroneous orders with errors in fact or law are passed by judicial officers. Such orders may result in grave miscarriage of justice in case of not filing of appeal/revision against the same for interference by the Appellate/Revisional Court. It will be appropriate that the Judicial Officers are periodically sensitized for preventing recurrence of errors committed by them and avoiding errors frequently committed by other Judicial Officers. The Chandigarh Judicial Academy, Chandigarh is directed to periodically compile cases involving such erroneous orders passed by Judicial Officers by obtaining the requisite information from Registrar Vigilance or Registrar Judicial of this Court and the concerned District and Sessions Judges and point out the errors committed to the Judicial Officers during the Induction/Refresher Training Courses organized for them while making dedicated efforts of not disclosing the particulars of the concerned Judicial Officers and the cases involved, although it may not be possible to maintain absolute secrecy about the same in view of the reporting of judgments of this Court and uploading of the orders on the website of this Court as well as the concerned District Courts.

(28) A copy of this order be sent to the Director (Administration), Chandigarh Judicial Academy, Chandigarh for requisite compliance and also to the Judicial Officer concerned for information and guidance.

Tribhuvan Dahiya