**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.7530 of 2014
Date of decision : 29.11.2016

Parvinder Kaur

......Appellant

Versus

Mandeep Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. N. S. Gill, Advocate for
Mr. Munish Gupta, Advocate for appellant.

Mr. Sanjay Singh, Advocate for
Mr. R. S. Thakur, Advocate for respondents No.1 & 2.

Mr. Sanjeev K. Arora, Advocate for respondent No.3.

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DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 26.04.2014 passed by the learned Motor Accidents Claims Tribunal, Hoshiarpur (hereinafter called the "Tribunal"), vide which the appellant-claimant has been awarded compensation to the tune of ₹1,85,000/- in a claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short the "Act") on account of death of Karamjit Singh Shahi in the motor vehicular accident, which took place on 29.07.2012.

2. The present appeal has been preferred by the appellant-claimant for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and have gone through the paper-book carefully.

4. Learned counsel for the appellant-claimant contended that

the deceased was an agriculturist by profession and was earning ₹3300/- per month but the learned Tribunal has wrongly taken the income of the deceased to be ₹2500/- per month. He further contended that the learned Tribunal has also not awarded the complete medical expenses without assigning any reason. He further contended that the learned Tribunal has not practically awarded the interest to the claimant which was her statutory right. He relied upon case ***Jatinder Kaur and another Vs. Mohammad Yousuf and others FAO No.1069 of 2001 decided on 12.08.2015***.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that the learned Tribunal has rightly taken into consideration the income of the deceased on appreciation of the evidence, which does not call for any interference. He further contended that the respondent-Insurance Company has already deposited the entire amount of compensation, so the appellant-claimant shall not be entitled for any amount of interest. He further contended that the learned Tribunal has wrongly awarded the funeral expenses to the tune of ₹25,000/- and loss to estate to the tune of ₹10,000/- which is not as per the Second Schedule appended to the Act.

6. I have duly considered the aforesaid contentions.

7. As per the case of the appellant-claimant, the deceased was an agriculturist and was earning ₹3300/- per month, but the learned Tribunal has determined the income of the deceased to be ₹2500/- per month *i.e.* ₹30,000/- per annum. The present accident has taken place on 29.07.2012. In those days, even a casual labourer can easily earn ₹3300/-

per month. So, the income of the deceased claimed by the claimant from his profession as an agriculturist at the rate of ₹3300/- per month cannot be stated to be unreasonable or on the higher side. So, the income of the deceased can safely be taken to ₹3300/- per month *i.e.* ₹39,600/- per annum. 1/3rd of his income is to be deducted towards his personal and living expenses. The remainder comes to ₹26,400/-. The age of the deceased at the time of the accident was 73 years, so the multiplier of 5 shall be applicable. Thus, the loss of dependency comes to ₹1,32,000/-.

8. It has come in evidence on the basis of the bills Ex.A18 to Ex.A25 that a total sum of ₹65,123/- were spent on the medicines and the treatment of the deceased in the hospital. The learned Tribunal has referred to cases ***Reliance General Insurance Company Ltd. Vs. Girdhari Lal and another FAO No.1312 of 2014 decided on 12.03.2014*** and ***The Oriental Insurance Company Ltd. Vs. Smt. Kulwinder Kaur and another FAO No.3874 of 2014 decided on 26.07.2013***, wherein it is held that the actual medical expenses can be given to the claimant whenever there is a justification of departure from the Second Schedule. In the instant case the learned Tribunal has found that deceased Karamjit Singh Shahi had remained admitted in Satyam Hospital and Trauma Hospital, Jalandhar from 29.07.2012 till 03.08.2012 and the expenses of his treatment were borne by the claimant. The learned Tribunal has come to the conclusion that the ends of justice warrants that there should be departure from restriction of granting compensation under head "medical expenses" beyond ₹15,000/-, but still the learned Tribunal has awarded only ₹50,000/- towards the

medical expenses. Once the learned Tribunal has come to the conclusion that in view of the circumstances of the case the departure from the Second Schedule was made out and even the actual expenses can be given, so there was no reason not to award full amount of ₹65,123/- towards the medical expenses. So, the appellant-claimant shall be entitled to ₹65,123/- towards the medical expenses.

9. The learned Tribunal in the relief clause has mentioned that the amount of compensation be deposited within three months, failing which the claimant will be entitled to interest at the rate of 7.5% per annum from the date of filing the claim petition till recovery. This Court in case ***Jatinder Kaur and another Vs. Mohammad Yousuf and others*** (supra) has laid down as under:-

> *"The Tribunal has not granted any interest and allowed the benefit of only the liberty, for the Insurance Company to comply with the award within a period of two months to ward off liability for interest. It would appear that the Insurance Company deposited the money as directed and saved itself from the liability of interest. I find no particular justification for denying the interest when it is statutory in character. I provide, therefore, also for interest which will be duly worked out from the date of the filing of the petition @ 6% upto the date when the deposit was made by the Insurance Company and after deducting the said amount of deposit, the balance of money will attract interest till the date of the payment @ 7.5%. Considering the fact, that the accident is of the year 1988."*

10. In view of the aforesaid ratio of law, the appellant-claimant shall also be entitled to the interest, which will be duly worked out from the date of the filing of the petition @ 6% upto the date when the deposit was

made by the Insurance Company and after deducting the said amount of deposit, the balance of money will attract interest till the date of the payment @ 7.5%.

11. No doubt as per the Second Schedule, the amount permissive for the funeral expenses is ₹2500/- but the learned Tribunal has awarded ₹25,000/- as funeral expenses and ₹10,000/- as loss to estate, however, in the absence of any cross appeal/cross objections by the respondent-Insurance Company the aforesaid amount cannot be reduced.

12. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellant-claimant is enhanced to ₹2,32,123/- from ₹1,85,000/- as awarded by the Tribunal. The appellant-claimant shall also be entitled to the interest, which will be duly worked out from the date of the filing of the petition @ 6% upto the date when the deposit was made by the Insurance Company and after deducting the said amount of deposit, the balance of money will attract interest till the date of the payment @ 7.5%. The liability to pay the enhanced amount of compensation shall remain same as determined by the learned Tribunal in the main award.

29.11.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No