IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) **FAO No.7067 of 2015 (O&M)**
Date of decision : 08.11.2016

M/s The New India Assurance Company

......Appellants

Versus

Smt. Ved Wanti and others

...Respondents

(2) **FAO No.1132 of 2016 (O&M)**
Date of decision : 08.11.2016

Smt. Ved Wanti and others

......Appellants

Versus

Mahabir and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. S.S. Sidhu, Advocate for appellant-Insurance Company in FAO No.7067 of 2015 and for respondent No.3 in FAO No.1132 of 2016.

Mr. Ram Chander, Advocate for respondents No.1 to 6-claimants in FAO No.7067 of 2015 and for appellants in FAO No.1132 of 2016.

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DARSHAN SINGH, J.

CM-3481-CII-2016 in
FAO No.1132 of 2016

There is delay of 23 days in re-filing the present appeal. The appellants have filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 23 days in re-filing the present appeal is hereby condoned.

Main Appeals

This judgment shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 10.07.2015, passed by learned Motor Accidents Claims Tribunal, Sonipat (hereinafter called the "Tribunal"), vide which the appellants-claimants of FAO No.1132 of 2016 have been awarded compensation to the tune of Rs.3,62,560/- on account of death of Sukhvir Singh in the motor vehicular accident, which took place on 22.03.1991.

2. FAO No.7067 of 2015 has been preferred by the New India Assurance Company Limited, who was impleaded as respondent No.3 in the claim petition, assailing the rate and award of interest by the learned Tribunal in favour of the claimants.

3. FAO No.2132 of 2016 has been filed by the claimants for enhancement of the amount of compensation.

4. I have heard learned counsel for the parties and have gone through the record carefully.

5. Initiating the arguments, Mr. S.S. Sidhu, Advocate, learned counsel for the appellant-Insurance Company contended that the learned Tribunal has wrongly awarded the interest from the date of filing the claim petition. He contended that initially the claim petition filed by the claimants

was dismissed by the Tribunal on 24.12.1994 on the ground that involvement of the vehicle was not proved, but the said award passed by the learned Tribunal was set aside by this Court on 10.10.2012. He contended that at the most the Insurance Company can be liable to pay the interest from the date the High Court has reversed the findings of the learned Tribunal and remanded back the case. He further contended that the learned Tribunal has also awarded the interest at the higher rate *i.e.* 10% per annum if the payment is made within 90 days, failing which at the rate of 12% per annum, from the date of filing the petition till the date of payment. Thus, he contended that the rate of interest should not be more than @ 7.5% per annum and that too from the date when the case was remanded by this Court to the Tribunal.

6. On the other hand, learned counsel for the appellants-claimants contended that there is nothing wrong in the award of interest by the learned Tribunal. They have been rightly held entitled to the interest from the date of filing the petition. If the learned Tribunal has wrongly dismissed the petition, the claimants cannot be held at fault. He further contended that the rate of interest awarded by the learned Tribunal is also reasonable.

7. He further contended that the learned Tribunal has not awarded the adequate amount of compensation to the claimants. No future prospects have been added to the income of the deceased. Nothing has been awarded on account of loss of love and affection to the four minor children of the deceased and the mother of the deceased. Thus, he contended that the

appellant-claimant are entitled for the enhancement of the amount of compensation.

8. In reply to the aforesaid contentions, learned counsel for the Insurance Company contended that as the deceased was a government employee and after his death his family members are getting the family pension, so no future prospects were required to be added to the income of the deceased. He further contended that just amount of compensation has been awarded to the appellants-claimants under all the relevant heads.

9. I have duly considered the aforesaid contentions.

10. Firstly, I take up the plea of the claimants regarding enhancement of the amount of compensation. Deceased Sukhvir Singh was working as Telephone Operator and was getting Rs.1615/- per month as salary. So, the deceased was a government employee having a regular job. He was bound to earn the annual increments, revised dearness allowance and revision of pay scale during his service tenure and his income was bound to increase with the passage of time and advancement of his career but the learned Tribunal has not awarded any increase to the income of the deceased on account of the future prospects. The deceased was 31 years of age at the time of his death. So, 50% of the income of the deceased is required to be added towards the future prospects. The total income of the deceased comes to Rs.2422.50 per month i.e. Rs.29,070/- per annum. The deceased had six dependent family members. So, as per the law laid down by Hon'ble Apex Court in case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121***, 1/4th of the income

of the deceased shall be deducted towards his personal and living expenses. The remainder comes to Rs.21,802.50, to make it a round figure we can take it to Rs.21,800/-. The deceased was 31 years of age at the time of his death. The multiplier of 16 shall be applicable. The total loss of dependency comes ot Rs.3,48,800/-.

11. The learned Tribunal has not awarded any amount to the minor children of the deceased on account of loss of love and affection. The deceased has two minor daughters and two minor sons. They will be entitled to Rs.2,00,000/- towards loss of love, care and guidance of their father. Appellant-claimant No.6 Smt. Jello mother of the deceased shall also be entitled to Rs.1,00,000/- towards loss of love and affection of her son. The total amount of compensation payable to the claimants is detailed as under:-

Sr. No.	**Head of compensation**	**Amount of compensation**
1.	Loss of dependency	3,48,800
2.	Loss of consortium to claimant No.1	1,00,000
3.	Loss of love, care and guidance to minor children-claimants No.2 to 5	2,00,000
4.	Loss of love and affection to the mother	1,00,000
5.	Funeral expenses	25,000
6.	Loss to estate	5000
Total		**7,78,800**

12. I do not find any substance in the contentions raised by learned counsel for the appellant-Insurance Company that the claimant should have been awarded the interest from the date when the case was remanded to the Tribunal by this Court. The claimants have filed the claim

petition on 06.07.1991. If the learned Tribunal has wrongly dismissed the claim petition and the said judgment was set aside by this Court remanding the case to the Tribunal for assessment of the compensation, the claimants cannot be made to suffer, so they will certainly be entitled to interest from the date of filing the claim petition. However, the rate of interest awarded by the learned Tribunal is on the higher side. In the grounds of appeal, the Insurance Company has pleaded that the prevalent rate of interest is 8.25% per annum on the fixed deposits. So, the appellants-claimants shall be entitled to interest @ 8.25% per annum from the date of filing the petition till payment on the original awarded amount by the learned Tribunal i.e. Rs.3,62,560/-. As far as the enhanced amount of compensation is concerned, if the Insurance Company makes the payment of the enhanced amount within 60 days from the date of this judgment, they will not be liable to pay any interest, failing which the claimants shall be entitled to the interest @ 8.25% per annum on the enhanced amount from the date of filing the petition till realisation.

13. Thus, keeping in view my aforesaid discussion, both the FAOs are hereby partly allowed. The amount of compensation payable to appellants-claimants in FAO No.1132 of 2016 on account of death Sukhvir Singh is enhanced from Rs.3,62,500/- to Rs.7,78,800/-. The appellants-claimants shall be entitled to interest @ 8.25% per annum from the date of filing the petition till payment on the original awarded amount by the learned Tribunal i.e. Rs.3,62,560/-. If the Insurance Company makes the payment of the enhanced amount within 60 days from the date of this

judgment, they will not be liable to pay any interest on the enhanced amount of compensation, failing which the claimants shall be entitled to the interest @ 8.25% per annum on the enhanced amount also from the date of filing the petition till realisation. The liability to pay the enhanced amount of compensation and the apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

08.11.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No