IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4764 of 2003 (O&M)
Date of decision: 19.12.2017

Jaswinder Kaur and others .... Appellants

Versus

Vijay Kumar and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. G.S. Sandhu, Advocate
for applicants-appellants No.2 and 3

Mr. R.C. Gupta, Advocate
for respondent No.3-Insurance Company.

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Avneesh Jhingan, J.

The present appeal has been filed against the award dated 29.04.2003 passed by Motor Accidents Claims Tribunal, Patiala (hereinafter referred to as the 'Tribunal') in MACT Case No. 28 dated 28.01.2002.

The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsels, subject to all just exceptions.

On 20.12.2001, Malkiat Singh aged 30 years was going on his scooter, the said scooter was hit by a rashly and negligently driven truck bearing registration No. HIK-4264 (for short, 'the offending vehicle') near village Chanduan Khurd, Tehsil Rajpura. As a result of the accident, Malkiat Singh died on the spot.

The claim petition was filed by the legal heirs of the deceased. The Tribunal after appreciating the facts and considering the evidence awarded a sum of Rs. 2,25,000/-. The present appeal has been filed for enhancement of compensation.

The parties have not disputed the factum of involvement of offending vehicle, rash and negligent driving of the offending vehicle, age of the deceased and the monthly earning assessed by the Tribunal.

I have heard learned counsel for the parties, perused the paperbook and the relevant documents produced by them.

Learned counsel for the appellants argued that the Tribunal has not awarded future prospects, his contention is that 1/3rd deduction for self expenses has been made where as the deceased was survived by five dependents and hence 1/4th deduction should have been made. He challenged the multiplier of 11 applied by the Tribunal. He contended that deceased was 30 years of age hence multiplier of 17 should have been applied. His grievance is that the amount awarded for funeral expenses is Rs.600 is on the lower side and no amount has been awarded for loss of consortium and loss of estate. He argued that the Tribunal erred in not awarding interest.

Learned counsel for the Insurance Company defended the award and argued that since there was no established income no future prospects should be awarded. His contention is that accident is of the year, 2001, the conventional heads should be awarded according to the price index of the said year. He argued that it is the discretion of Tribunal to award interest.

The contention of the learned counsel for the appellants deserves acceptance as these are supported by the decisions of Hon'ble Apex Court in cases of ***'National Insurance Company Limited Vs. Pranay Sethi and others 2017 ACJ 2700'***, ***'Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 121'*** and ***'Hem Raj Vs.Oriental Insurance Company Ltd. in Civil Appeal No.19603 of 2017 decided on***

22.11.2017'.

The Hon'ble Apex Court in **Pranay Sethi's case (supra)** has held that where deceased was below 40 years of age and was having fixed salary or self employed, 40% future prospects are to be awarded. It has been held that Rs. 70,000/- is to be awarded under conventional heads i.e. Rs.15,000/- for funeral expenses; Rs. 15,000/- for loss of estate and Rs.40,000/- for loss of consortium.

The Hon'ble Apex Court in ***Smt. Sarla Verma 's case (supra)*** has held that where deceased is survived by four to six dependents, one fourth deduction for self expenses is to be made. It has been held that the multiplier of 17 would be applicable where deceased was 30 years of age.

In ***Hem Raj case (supra)*** the Hon'ble Apex Court has held that the future prospects are to be awarded even in cases where the income is assessed relying upon the minimum wages prevalent at the time of accident.

The contention of learned counsel for the appellant of not awarding of interest by the Tribunal, deserves acceptance.

Hon'ble the Supreme Court in ***Dharampal and others Versus U.P. State Road Transport, 2008(12)SCC 208*** has held as under:

> "8.As per Section 171 of the Motor Vehicle Act, 1988 (hereinafter referred as 'Act') where the claim for compensation made under the act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at *such rate* from such date not earlier than the date of making claim.
> 9. In ***National Insurance Company Ltd. Vs. Keshav Bahadur, reported in 2004(2) RCR (Civil) 99: (2004) 2 SCC 370*** this Court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression "may"is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is

> discretionary and is not and cannot be bound by rules.
> 10. Interest is compensation fro forbearance or detention of money, which ought to have been paid to the claimant. No rate of interest is fixed under Section 171 of the Act and the duty has been bestowed upon the court to determine such rate of interest"

As per the said decision, interest to be awarded is statutory interest. Minimum what was required was the Tribunal should have dealt with the issue of awarding of interest separately. Even if, 'may' is mentioned in Section 171 of the Act, it is to be considered that the interest is to compensate the withholding of the money which was due to the claimants. In the present case, the Tribunal has not mentioned even a single reason for not awarding interest to the claimants.

As per the decision of the Hon'ble Apex Court, cited above and in the facts and circumstances of the case, the claimants are entitled to interest.

In view of the above discussion and the case laws cited above, the compensation is recalculated as under:

Income	Rs.2500/- per month
Plus 40% future prospects	Rs.1000/-
Total	Rs.3500/-
1/4th deduction for self expenses	Rs.875/-
Income (3500-875)	Rs.2625/-
Compensation to be awarded by applying multiplier of '17'	2625 x 12 x 17=5,35,500/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.6,05,500/-

In view of the above, the award dated 29.04.2003 is modified to the extent that the compensation of Rs. 2,25,000/- awarded by the Tribunal is enhanced to Rs. 6,05,500/-

The claimants would be entitled to interest at the rate of 6% per annum on the amount awarded by the Tribunal as well as on the enhanced amount. The interest will be payable from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

19.12.2017
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1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No