IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No.301 of 2008

Lajwanti and others ... Appellants

Vs.

Jaswinder Singh and another ... Respondents

2. FAO No.2126 of 2005

National Insurance Company Limited ... Appellant

Vs.

Lajwanti and others ... Respondents

Date of Decision:15.12.2017

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. S.K. Garg, Narwana, Sr. Advocate with
Mr. Virat Amarnath, Advocate for the appellants.
Mr. V. Ramswaroop, Advocate
for respondent-Insurance Company-respondent No.2.
Mr. S.K. Bawa, Advocate for
Mr. S.C. Chhabbra, Advocate for respondent No.5.

AVNEESH JHINGAN J. (Oral)

By this common judgment both the aforementioned appeals are being decided together being against the same award.

These two appeals have been filed against award dated 11.02.2005 passed by the Motor Accident Claims Tribunal, Mansa (for short “the Tribunal”).

The Insurance Company and the claimants have filed these appeals being aggrieved of the quantum of compensation awarded.

On 24.04.2004, Ravi Kumar @ Ravikant aged 35 years lost his life in a motor vehicular accident which occurred between a car bearing registration No. DL-4CM/3524 and a jeep bearing registration No.PB-31C-3265 (for short “the offending vehicle”). The offending vehicle was being driven by respondent No.1 rashly and negligently. Ravi Kumar @ Ravikant died on the spot. FIR No.109 dated 24.04.2004 was registered at Police Station Sadar, Mansa.

The claim petition under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") was filed by the legal heirs of the deceased. The Tribunal awarded a sum of ₹ 18,66,524/-. The amount awarded includes ₹ 9500/- awarded under the conventional heads.

I have heard learned counsel for the parties and perused the paper-book and record.

Learned senior counsel for the claimants argued that the Tribunal has not added future prospects while calculating loss of dependency. He contended that deceased was Junior Engineer in Punjab Mandi Board. His salary was duly proved by salary certificate vide Ex. P-11. He further argued that amount awarded towards conventional heads is on the lower side. He further argued that the Tribunal has wrongly made 1/3rd deductions for self expenses whereas the deceased was survived by four dependents. He argued that the Tribunal erred in not awarding statutory interest.

Learned counsel for the Insurance Company while arguing his appeal contended that income tax has not been deducted while assessing the earning of the deceased. Defending the appeal of the claimants, he could not raise serious objection for enhancement of conventional heads and awarding for future prospects.

Contention raised by the learned counsel for the claimants deserves acceptance in view of the law laid down by the Hon'ble Apex Court in ***National Insurance Company Limited*** v. ***Pranay Sethi and others***; **Special Leave Petition (Civil) No.25590 of 2015; decided on 31.10.2017.** Hon'ble the Apex Court has held that where the deceased was below 40 years and having permanent job, 50% future prospects are to be awarded. It has further been held that ₹ 70,000/- is to be awarded under conventional heads i.e. ₹ 15,000/- on account of funeral expenses, ₹15,000/- on account of loss of estate and ₹ 40,000/- on account of loss of consortium. The contention of the learned counsel for the appellant regarding deduction of self expenses deserves acceptance in view of the decision of Hon'ble the Supreme Court in ***Smt. Sarla Verma and others*** v. ***Delhi Transport Corporation and another***; **2009 (6) SCC 121** wherein it has been held that 1/4th deduction is to be made where the deceased is survived by 4-6 dependents.

The contention raised by the learned counsel for the Insurance Company deserves acceptance in view of the law laid down by the Hon'ble Apex Court in ***Shyamwati Sharma and others*** v. ***Karam Singh and others***; 2010 (3) RCR (Civil) 741. It was held that from the gross salary income tax payable should be deducted while assessing the earning of the deceased. Since entire details of deduction to be availed under Income Tax Act are not available, on estimated calculation, ₹ 15,000/- is deducted as Income Tax. Both the counsel agreed for the said proposal.

The contention of learned counsel for the appellant regarding awarding of interest by the Tribunal, deserves acceptance.

Hon'ble the Supreme Court in ***Dharampal and others Versus U.P. State Road Transport Corp*** **n** . 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 thedate 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 for 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 that 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 discussion and the case law cited above, compensation is recalculated as under:

Description	***Amount***
Annual Income Assessed	₹ 1,74,000/-
Future prospects 50%	₹ 87,000/-
Less Income Tax, ₹ 15000/-	₹ 246000/-
1/4th deduction for self expenses	₹ 61500/-
After deduction self expenses total is	₹ 184500/-
After applying the multiplier of 16 on the total amount of ₹ 184500/-, total is	₹ 29,52,000/-
After adding funeral expenses of ₹15000/-, Loss of estate ₹15000/- and Loss of consortium ₹40,000/-, total is	₹30,22,000/-

Accordingly, the award dated 11.02.2015 is modified to the extent that amount of ₹ 18,66,524/- awarded by the Tribunal is enhanced to ₹ 30,22,000/-. The claimants would be entitled to interest @ 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.

Consequently, appeals are disposed of in the above said terms.

15.12.2017
rajeev

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**