

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

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FAO No. 4565 of 2014 (O&M)
Date of Decision: August 18, 2017

Mandip Kaur and others

..Appellants

Versus

Sukhdev Singh and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. C.L. Verma, Advocate
for the appellants.

Mr. Ajay Singla, Advocate
for respondent no.2-Insurance Company.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation in regard to death of Sham Nand son of Tulsi Dass in a motor vehicular accident that took place on 23.09.2012.

The widow, two minor children and mother of deceased Sham Nand filed petition under Section 163-A of the Motor Vehicles Act, 1988 (ini short, 'the Act') for grant of compensation. The Motor Accidents Claims Tribunal, Amritsar (hereinafter to be referred as 'the Tribunal') assessed income of the deceased at Rs.3,300/- per month, deducted 1/3rd for personal and living expenses and adopted a multiplier of 17 to compute loss of dependency to the tune of Rs.4,48,800/-. In addition, an amount of Rs.5,000/- for funeral expenses, Rs.5,000/- for loss of consortium to the widow and Rs.2,500/- on account of loss of estate has been awarded.

Counsel for the appellants would argue that as the deceased left behind his widow, two minor children and mother, held entitled to compensation, permissible deduction would be 1/4th in place of 1/3rd. Compensation awarded under conventional heads by the Tribunal needs re-look and enhancement. In support of his contention, he has referred to Division Bench judgment of Madhya Pradesh High Court **Anurag Jain and others vs. Ramveer Singh and others, 2007 (4) TAC 279** and judgment of Karnataka High Court **Ningappa Ramanna Kori and another vs. Tamil Nadu State Transport (Madurai) Ltd., 2016 AAC 1629**. Reference has also been made to judgment of this Court **Pawan Kumar and others vs. Ramesh Kumar and others, 2016(1) Law Herald 758**.

Another submission made by counsel is that the Tribunal has awarded interest @ 7.5% per annum only on failure of the respondent to pay compensation within a period of two months. It is argued that once the claimants have been found entitled to get compensation from the date of petition, there was no reason for the Tribunal to deny interest from the date of petition till payment.

Counsel representing the insurance company has supported the award with the submission that as application for compensation was filed under Section 163-A of the Act, there is no option with the Tribunal except to assess compensation as provided in the Second Schedule appended to Section 163-A of Act. It is further argued that the Tribunal has assessed compensation strictly in consonance with the structured formula.

I have heard counsel for the parties and perused the paper book particularly the award impugned.

Till date, I have not come across any judgment of Hon'ble the

Supreme Court where compensation more than what has been specified in the Second Schedule appended to Section 163-A of the Act has been paid in a petition filed under Section 163-A of the Act. However, Hon'ble the Supreme Court of India in ***Puttamma & Ors. vs. K.L. Narayana Reddy & another*** AIR 2014 SC 706 held that Second Schedule (Section 163-A) of the Motor Vehicles Act has been redundant due to cost of living and direction was issued to Central Government to make amendment in the Act.

A Co-ordinate bench of this Court in *Pawan Kumar's* case (supra) has held that if a petition is filed under Section 163-A of the Act, there is no scope for deviation for a manner of how the amounts are specified as payable so long as there is no legislative change in Second Schedule. This Court refused to grant any compensation for loss of consortium and loss of love and affection for the children though compensation was enhanced with regard to loss of dependency.

A Division Bench of Madhya Pradesh High Court (Gwalior Bench) added an amount of Rs.50,000/- towards loss of love and affection, loss of estate and funeral expenses etc. in the case of death of a child aged about 10 years. However, the Court has not laid down any ratio if compensation under Section 163-A of the Act can be awarded more than what has been envisaged in the Second Schedule. Under the circumstances, judgment passed by the Division Bench of Madhya Pradesh High Court (Gwalior Bench) has no precedential value. Even the appellants cannot derive any advantage to their contention from the judgment by a Single Bench of Karnataka High Court as compensation was awarded strictly in accordance with Second Schedule. In this view of the matter, I do not find any merit in contention of the appellants that they are entitled to

compensation under additional heads which are not provided for in the Second Schedule appended to Section 163-A of the Act.

So far as contention of appellants with regard to interest on the amount assessed by the Tribunal, the said contention is meritorious and deserves acceptance. The Tribunal has not assigned any reason to deny interest *pendente lite* nor for extending concession to the respondents. It is not the plea of insurer that delay, if any, in culmination of proceedings by the Tribunal is attributable to the Claimants. Under the circumstances, finding of the Tribunal allowing interest @ 7.5% per annum only in the eventuality of failure of the respondents to pay compensation within a period of two months cannot be allowed to sustain and accordingly set aside. The claimants shall be entitled to get interest @ 7.5% per annum on the amount assessed by the Tribunal from the date of petition till payment.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

18.08.2017
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No