IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 113 of 1991 (O&M)
Date of decision: 01.02.2018

Har Kaur and others .... Appellants

Versus

Sardari Lal and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Sandeep Punchhi, Advocate
for the appellants.

Mr.Pankaj Gupta, Addl.A.G., Punjab.

****

Avneesh Jhingan, J.

The present appeal has been filed against the award dated 22.09.1990 passed by Motor Accidents Claims Tribunal, Ferozepur (hereinafter referred to as 'Tribunal').

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.

In a motor vehicular accident that occurred on 20.07.1989, Surjit Singh, aged 20 years, lost his life. He was sitting on the right side of the mud-guard of the tractor, his brother Bakshish Singh was sitting on the left mud-guard. Tractor was being driven by Hardeep Singh. Bus bearing registration No.PJG-4619 was involved in the accident.

The legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The Tribunal held that it was a case of contributory negligence. The ratio of negligence was assessed by the Tribunal 66% of the tractor driver and 34% of the bus driver. The Tribunal awarded a sum of Rs.29,000/-but no interest was awarded. The interest was awarded if payment is not made within two months.

Aggrieved of the said award, the present appeal has been filed by the claimants.

Learned counsel for the appellants argued that the multiplier of 12 has wrongly been applied by the Tribunal. No amount has been awarded for future prospects, funeral expenses and loss of estate. He further argued that the Tribunal erred in holding that it was a case of contributory negligence. He contended that the Tribunal ought to have awarded interest.

Learned State counsel defended the award and argued that the deceased was an unmarried person and ½ deduction for self expenses should have been made. He argued that just and equitable amount had been awarded. Interest has also been awarded subject to the condition if amount is not paid within two months.

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

There is no dispute on the proposition that the onus to prove the rash and negligent driving of the offending vehicle is on the claimants. In the present case, two eye witnesses were produced by the claimants. As per the statements of the witnesses, the accident occurred when a tractor was parked on the kachha portion on the right side of the road. Bus came from behind and hit the tractor. The statements of the eye witnesses were not found worth reliance as they faulted in cross examination to some extent.

It would be pertinent to mention here that Sardari Lal, driver of the bus deposed before the Tribunal and gave a totally different version of the accident. According to the driver, the tractor was going ahead of the bus when it suddenly took right turn, as a result of which the accident occurred. The Tribunal relied upon the photographs clicked on the spot to come to the conclusion that the version given by the driver appears to be more reliable.

In the proceedings under the Act, the onus casted upon the claimants is not as heavy as in criminal proceedings. The preponderance theory is to be applied while coming to the conclusion of rash and negligent driving.

In the present case, it cannot be ruled out that there was some contribution in the accident by the driver of the tractor. Merely because the tractor was ahead of the bus and it suddenly took right turn will not totally absolve the bus driver from its duty. The driver in his statement has stated that he was overtaking the bus. While overtaking, the driver of the bus was required to be vigilant enough of other vehicles. In such circumstances, the contributory negligence of the tractor driver is held to be 34% instead of 66%.

The monthly earning assessed of the deceased has not been disputed. The multiplier to be applied and deduction to be made has been settled by the Hon'ble Apex Court in case of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77***. The deceased being 20 years of age and unmarried, a multiplier of 18 should have been applied and ½ deduction for self expenses should be made.

The Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017*** has held that where the deceased was below 40 years of age and self employed or having fixed salary, 40% future prospects are to be awarded. It has further been held that the amounts of Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses are to be awarded.

In ***Hem Raj vs. Oriental Insurance Company Ltd. in Civil Appeal No.19603 of 2017, decided on 22.11.2017,*** the Hon'ble Apex Court has held that where the income is assessed on the basis of minimum wages prevalent at the time of accident even in such cases future prospects have to be added.

As per the discussion above, the compensation is recalculated as under :-

Annual income	Rs.12,000/-
Add 40% future prospects	Rs.4800/-
Total income	Rs.16,800/-
½ deduction for self expenses	Rs.8,400/-
Dependency	Rs.8,400/-
Applying multiplier of 18	Rs.1,51,200/-
Funeral expenses	Rs.15,000/-

Annual income	Rs.12,000/-
Loss of estate	Rs.15,000/-
Total	Rs.1,81,200/-
Less 1/3rd deduction for contributory negligence	Rs.60,400/-
To be awarded amount	Rs.1,20,800/-

The award dated 22.09.1990 is modified to the extent that the amount awarded by the Tribunal of Rs.29,000/-is enhanced to Rs.1,20,800/-.

The contention raised by learned counsel for the appellants deserves acceptance. Section 171 of the Act provides for the statutory interest. A perusal of the award will show that the Tribunal has not dealt with the awarding of interest.

The Hon'ble Apex Court in case ***Dharampal and others vs. U.P. State Road Transport Corpn. 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."*

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 of the Act 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.

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.

In the above referred decision, the Hon'ble Apex Court has held that the Tribunal while awarding compensation should deal with the awarding of interest separately.

In the facts and circumstances of the case, interest @ 6% per annum is awarded to the claimants on original as well as enhanced amount from the date of filing the claim petition till the realisation of the amount.

The appeal is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

01.02.2018
anju

1.Whether the order is speaking/reasoned: Yes

2.Whether the order is reportable : Yes