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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.2505 of 2001 (O&M)
Date of Decision: 06.12.2018

Nasima Rehman and others

Appellants

Versus

Rajesh Malik and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Hitesh Kumar Sammi, Advocate for the appellants.

Mr. Pradeep Goyal, Advocate for the Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 13.06.2000 passed by the Motor Accident Claims Tribunal, Patiala [for brevity 'the Tribunal'] in MACT No. 28-T/99/08.01.1997 has been assailed by the legal heirs of Mohammad Azizul Rehman (deceased) for enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

Widow and minor daughter of the deceased are the appellants. The owner of Gas Tanker bearing registration No. HR-29C-2098 [hereinafter referred to as 'offending vehicle'], driver and insurer i.e. National Insurance Co. Ltd. of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts of the case are that on 19.11.1996, Mohammad Azizul Rehman alongwith other co-passengers was travelling in car bearing registration No. PB-10U-5225 and was going to Muzaffarnagar from Ludhiana. When he reached near Bhai Ghanya Hospital at Ambala-Rajpura road, the car was hit by a rashly and negligently driven offending vehicle. The car was ran over by the offending vehicle and all the occupants of the car died at the spot. FIR No.207, dated 19.11.1996 was registered.

A claim petition under Section 166 of the Act was filed. The Tribunal, after considering the facts and appreciating the evidence adduced, held that accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹3,05,000/-. The said amount included ₹5,000/- for funeral expenses.

In the claim petition, it was pleaded that the deceased was working as a Contractor and used to supply labour to various Factories and Industrial Undertakings. To substantiate the same, TDS certificates (Ex.P1 to P10) were produced by the widow but she admitted in her cross-examination that her husband was not maintaining accounts and she is unable to bring any record of income & expenditure of her husband. From the perusal of the TDS Certificates, it was noticed that TDS Certificates were for the assessment years 1990-91 and 1991-92 whereas the accident occurred in the year 1996. Moreover, TDS Certificates were of M/s M.A. Rehman Tyagi and Brothers, nothing was produced by the claimants to connect the deceased with the said firm. In such circumstances, the Tribunal relied upon the minimum wages prevalent at the time of accident in the State of Punjab and assessed the monthly income of the deceased as ₹1,500/-, made 1/3rd deduction for self expenses and multiplier of 25 was applied.

Heard learned counsel for the parties, perused the paper book and relevant documents produced.

Learned counsel for the appellants contends that no future prospects have been awarded and amounts awarded for loss of consortium, loss of estate and for funeral expenses are on the lower side. Further grievance is that no interest has been awarded by the Tribunal.

Learned counsel for the insurer defended the award and submitted that in consonance with the decision of the Supreme Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** multiplier of '17' is to be applied instead of '25', as the deceased was 28 years old.

The contentions raised by learned counsel for the parties deserve acceptance.

There is no dispute amongst the parties with regard to age of the deceased, monthly earning of the deceased and 1/3rd deduction made for self expenses.

Having due regard to the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 40% future prospects are awarded. The appellants are entitled to ₹15,000/- each for funeral expenses and loss of estate. ₹40,000/- is awarded to the widow for loss of consortium.

As the quantum of compensation is being revisited, the multiplier is being made in consonance with the decision of the Supreme Court in ***Sarla Verma's*** case (supra) i.e. '17'.

In view of above discussion, compensation is re-calculated as under:

Particulars	***Amount (in ₹)***
Monthly income of the deceased assessed	1,500/-
40 % Future Prospects	600/-
Sub Total	2,100/-
1/3rd deduction for self expenses	700/-
Monthly Dependancy	1,400/-
Annual Dependancy	16,800/-
Applying multiplier of 17	**2,85,600/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**3,55,600/-**

The award dated 13.06.2000 is modified to the extent that amount of ₹3,05,000/- awarded by the Tribunal is enhanced to

₹3,55,600/-. The amount awarded for loss of consortium to widow shall be disbursed to the widow and the balance amount shall be disbursed to the claimants in the same proportion as was held by the Tribunal.

It is pertinent to note here that the Tribunal while awarding compensation did not award interest on the amount of compensation, which is statutory in nature. The Supreme Court in ***Dharampal and others Vs. U.P. State Road Transport Corporation 2008(12) SCC 208*** 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.*
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> *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.*
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> *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."

In view of above quoted decision, the claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal is partly allowed in the aforesaid terms.

[AVNEESH JHINGAN]
JUDGE

December 06th, 2018
pankaj baweja

1. Whether speaking/ reasoned : **Yes**/ No
2. Whether reportable : **Yes**/ No