IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2474 of 2013
Date of decision:- 26.04.2018

Sonia and Others

---Appellant(s).

Versus

Balwinder Singh and Others

---Respondent(s).

CORAM: HON'BLE Mr. JUSTICE AVNEESH JHINGAN

Present:- Mr. Ashwani Arora, Advocate, for the appellant(s).

Mr. Gourav Goel, Advocate, for respondent Nos. 1 and 2.

Mr. Paul S. Saini, Advocate, for respondent No.3-Insurance Company.

AVNEESH JHINGAN J. (Oral)

The present appeal arises from the award dated 01.08.2012 passed by Motor Accident Claims Tribunal, Rupanagar (for short 'the Tribunal').

On 30.10.2011, a motor vehicular accident took place which proved fatal for Kamal Kumar, aged 34 years. The deceased was coming from Lucky Dhaba on Ludhiana-Chandigarh GT Road towards his house at Morinda, District Ropar on his Chetak Scooter bearing registration No. CH-21-X-8801. When he reached near Choudhary Dhaba, District Rupanagar, suddenly a Qualis car bearing registration No. PB-01-5000 (in short 'offending vehicle') came from opposite side and and dashed into the scooter of Kamal Kumar. As a result of accident, he sustained head injuries and died on the spot. In this regard, an FIR was got registered.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by legal heirs of the deceased.

The respondents in the appeal are Driver, owner and insurer of the offending vehicle.

The Tribunal held that accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was proved as 34 years at the time of accident. His monthly income was assessed by the Tribunal as Rs.4,200/- .

The present appeal has been filed for enhancement of compensation.

Learned Counsel for the appellants contended that no future prospects have been added and deduction of 1/3rd has wrongly been made for self expenses instead of 1/4th as he was survived by four dependents. His grievance is that amount awarded under the conventional heads is on the lower side and the interest awarded by the Tribunal is conditional i.e. the compensation would carry interest only if the payment is not made within the three months form the date of passing of the award. He contended that the Tribunal ought to have awarded interest.

On the other hand, learned Counsel for the Insurance Company argued that, deceased was 34 years of age, multiplier of 17 has wrongly been applied instead of 16. He further argued that deduction of 1/3rd has been rightly made as the deceased was survived by three dependents. Interest has also been awarded, subject to the condition that if amount is not paid within three months.

Parties have not disputed the income of the deceased as assessed by the Tribunal. The contention that future prospects are to be awarded deserve accpetance in view of the decisions of the Supreme Court in

National Insurance Company Ltd. Vs. Pranay Sethi and Others 2017(10) JT 450 and ***Hem Raj Vs. Oriental Insurance Company Ltd., 2017 DNJ 1102.***

The deceased was 34 years of age and as per the table of multiplier given in ***Sarla Verma and Others Vs. Delhi Tranport Corporation and Another, (2009) 6 SCC 121,*** multiplier of 16 has to be applied. Since the compensation is being recalculated, it would be appropriate to make it in consonance with the decision of the Supreme Court. In ***Pranay Sethi's Case (Supra),*** the Supreme Court has held that an amount of 70,000/- is to be awarded under conventional heads i.e. Rs.15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium.

A perusal of the award shows that deceased was survived by four dependents. The affidavit was filed by the widow of the deceased, wherein it was clearly stated that they were four dependents, the said evidence was not rebutted. In such circumstances, $1/4^{th}$ deduction is to be made for self expenses.

For the reasons mentioned above, the compensation is recalculated as under:

Sr. No.	***Heads***	***Calculations***
(i)	Salary	₹4,200/- per month
(ii)	40% added towards future prospects	₹4,200+1,680=5,880/- per month
(iii)	$1/4^{th}$ deduction towards self expenses of the deceased	₹5,880-1,470=4,410/- per month
(iv)	Multiplier of 16 applied	₹4,410X12X16= 8,46,720/-
(v)	Loss of estate	₹15,000/-
(vi)	Funeral expenses	₹15,000/-
(vii)	Loss of consortium	₹40,000/-
	Total Compensation Awarded (iv)+(v)+(vi)+(vii)	**₹9,16,720/-**

The award dated 01.08.2012 is modified to the extent that the amount awarded of ₹ 6,00,000/- is enhanced to ₹9,16,720/-.

The contention raised by learned counsel for the appellants that interest should have been awarded, 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 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 Apex

Court has held that the Tribunal while awarding compensation should deal with the awarding of interest separately.

The appellants/claimants would be entitled to interest at the rate of 7% per annum on the amount awarded by the Tribunal as well as on the enhanced amount from the date of filing of the claim petition till realization of the amount.

Accordingly, the present appeal is partly allowed to the above extent.

26.04.2018 **(AVNEESH JHINGAN)**
Riya Grover **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*