IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 5103 of 2016 (O&M)

Date of Decision: 04.12.2018

Naresh Kumari and others

.......Appellants

Versus

Kuldeep Raj and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajeev Dev Sharma, Advocate
for the appellants.

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

AVNEESH JHINGAN, J.(oral)

The award dated 7.1.2016 passed by Motor Accident Claims Tribunal, Pathankot has been assailed by the legal heirs of Daulat Ram, seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The driver of bus bearing registration No. JK-02-AW-3149 (hereinafter referred to as 'offending vehicle'), owner and insurer of offending vehicle i.e. Oriental Insurance Company have been arrayed as respondents No. 1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 5.4.2015 Daulat Ram had gone to village Aiman Gujran. He was standing on the right side and was waiting for the bus, in the meantime, the offending vehicle which was being driven in a rash and negligent manner struck the deceased. As a result of the impact, he sustained multiple injuries and died during treatment. FIR was registered.

A claim petition under Section 166 of the Act was filed by the widow, minor son and mother of the deceased. The Tribunal after considering the facts and on appreciating the evidence adduced opined that the 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 compensation. The Tribunal awarded a sum of Rs.11,08,000/-.

The age of the deceased was 45 years at the time of accident. His monthly income was assessed as Rs.9000/-; 1/3rd deduction for self expenses was made and multiplier of 14 was applied. A sum of Rs. 25000/-each was awarded for loss of consortium, loss of estate, funeral expenses and loss of love and affection.

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

Learned counsel for the appellants contended that no future prospects have been awarded and the Tribunal has not awarded any interest on the compensation and only conditional interest had been awarded in case payment was not made within one month.

Learned counsel for the insurer argued that the amount awarded under conventional heads are on higher side and no amount can be awarded for loss of love and affection.

The contention raised by learned counsel for the appellant deserves acceptance. In view of the decision of the Supreme Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480.***, 25% future prospects are awarded as the deceased was 45 years of age. Since there is no dispute on account of loss of dependency calculated of

Rs.10,08,000/-, hence, 25% on the said amount is awarded as future prospect i.e. Rs.2,52,000/-

As the quantum of compensation is being revisited, the amounts awarded under conventional heads are made in consonance with the decision of the Supreme Court in **Pranay Sethi's case (supra)** i.e. Rs.15,000/- each for loss of estate and funeral expenses and Rs.40,000/- for loss of consortium to the widow. No amount can be awarded for loss of love and affection. The net effect is that amounts awarded under the conventional heads is reduced by Rs.30,000/-

The compensation awarded vide award dated 7.1.2016 is modified to the extent that the amount awarded of Rs. 11,08,000/- is enhanced by Rs.2,22,000/-.

It is pertinent to note here that the Tribunal while passing the award has not awarded any interest as per the provisions of Section 171 of the Act. Only conditional interest has been awarded in case compensation amount is not paid within one month. No reason has been given for not awarding interest on the amount awarded by the Tribunal.

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.

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"

Keeping in view the facts and circumstances of the case, the appellants are entitled to interest on the entire amount of compensation including the enhanced compensation at the rate of 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

04.12.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No