IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1370 of 2018 (O&M)
Date of Decision: March 23, 2018

New India Insurance Company ...Appellant

Versus

Kamli Devi and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Vinod Chaudhri, Advocate
for the appellant-insurance company.

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HARINDER SINGH SIDHU, J.

The Insurer has filed the present appeal challenging the award dated 21.10.2017 of the Motor Accident Claims Tribunal, Rupnagar (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 07.12.2016 in the area of Agampur Chowk, Anandpur Sahib a vehicular accident took place involving Bus No.PB-19-A-0525 (herein for short 'the offending vehicle'), wherein, Suren Kewat @ Surinder Kewat lost his life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

The Tribunal assessed the income of the deceased at Rs.7200/- per month, added 50% towards future prospects, deducted $1/4^{th}$ towards his personal expenses, applied the multiplier of 15 (deceased aged 37 years).

The loss of dependency was assessed at Rs.14,58,000/-. Besides, Rs.50,000/- towards 'loss of consortium', Rs.40,000/- as 'funeral expenses' and Rs.50,000/- towards 'loss of love and affection' were awarded. In all, compensation of Rs.15,98,000/- along with interest was awarded.

Challenging the award, Learned Counsel for the appellant-Insurance Company has argued that not only has interest of 9% per annum been awarded by the learned tribunal which is on the higher side. Additionally it has been directed that if the amount of compensation is not paid in full to the claimant-respondents within 2 months then interest of 6% shall be imposed on the amount of compensation till actual realization. It is argued that such a condition cannot be imposed as there is no provision in the Motor Vehicles Act, 1988 which can form the basis of such an order. He also contended that the amount awarded under the conventional heads is not in accordance with the latest pronouncement of the Apex Court. He, accordingly, stated that the impugned award be modified accordingly.

Having gone through the award, the submission appears to be justified. The question was considered by Hon'ble the Supreme Court in **National Insurance Co. Ltd. Versus Keshav Bahadur and Ors. 2004(2) SCC 370** wherein it was held that there was no express or implied power in the Motor Vehicles Act for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon. It was held that it virtually amounts to imposition of penalty for which there is no provision in the statute. It was observed:

> *"14. Though Section 110CC of the Act (corresponding to Section 171 of the New Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged*

whether a stipulation for higher rate of interest in case of default can be imposed by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective enhancement for default in payment of compensation. No express or implied power in this regard can be culled out from Section 110CC of the Act or Section 71 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore, directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation of higher rate of interest being enforced, in the manner directed by the Tribunal."

Accordingly, the direction for imposition of additional interest @ 6% per annum in case of default, cannot sustain.

Keeping in view the above and the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 AIR(SC) 5157** the compensation is re-assessed as under:-

Sr.No.	**Heads**	**Calculation (In Rs.)**
(i)	Monthly Income	7200/-
(ii)	40% of above (i) to be added as future prospects (deceased aged 37 yrs.)	7200+(7200x40/100) = 10,080/-
(iii)	Monthly dependency (1/4rd of (ii) deducted as personal expenses of the deceased - four dependants)	10080-(10080x1/4)= 7560/- per month
(iv)	Loss of dependency after multiplier of 15 is applied	7560x12x15= 13,60,800/-
(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	Rs.40,000/-
(vi)	Loss of Estate	Rs.15,000/-
(vii)	Funeral Expenses	Rs.15,000/-
	Total	***Rs.14,30,800/-***

The appeal is disposed of accordingly. The Award of the Tribunal is modified to the extent that the claimants-respondents are held entitled to total compensation of Rs.14,30,800/-, that is, Rs.1,67,200/- (1598000-1430800) less than the amount awarded by the Tribunal.

The appeal has been disposed of without notice to the respondents – claimants to avoid unnecessary delay and expense. A copy of this order be conveyed to the claimants-respondents No.1 to 4. In the event of the said respondents having any objection, they may file application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

March 23, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No