IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3962-2018 (O&M)
Date of Decision:26.07.2018

The Oriental Insurance Co. Ltd. ... Appellant

Versus

Panna Lal & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. D.P. Gupta, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Appellant/Insurance Company has filed the instant appeal assailing the award dated 18.04.2018 passed by the Motor Accident Claims Tribunal, Kurukshetra and in terms of which a total compensation amount of Rs.12,39,600/- has been awarded in favour of the claimants/parents on account of death of their son Vishal in a motor vehicle accident that took place on 01.12.2015. The liability for payment of compensation amount has been fastened upon the Insurance Company. Tribunal has further directed that the compensation amount be paid within a period of 30 days of passing of the award along with interest @ 7.5% per annum from the date of filing of the petition and in case of any delay, the Insurance Company would be liable to pay interest @ 12% per annum from the delayed period.

2. Learned counsel representing the appellant/Insurance Company has confined the scope of the instant appeal with regard to quantum of compensation. Challenge has also been laid to the directions issued by the Tribunal in the impugned award as regards the interest component. Counsel

argues that the deceased was a student and no evidence had been adduced with regard to him being an earning hand and yet the Tribunal has assessed a notional monthly income of the deceased as Rs.8,000/-. Counsel urges that the Tribunal under such circumstances, ought to have assessed the monthly income as Rs.7600/- which were the minimum wages admissible to an unskilled worker in relation to the date of accident. Second submission raised is with regard to the addition in income granted by the Tribunal @ 40% towards future prospects. Argument raised is that in the case of assessment of notional income, no addition in income could have been granted. It is further argued that the Tribunal has erred in applying the multiplier by taking into account age of the deceased whereas the multiplier ought to have been adopted by taking into reckoning the age of the claimants. Last submission raised by counsel is that the Tribunal has erred in awarding penal interest. It is contended that once the Tribunal had exercised its discretion to award interest @ 7.5% per annum from the date of filing of the claim petition till actual realization, the further directions issued for award of penal interest at a higher rate i.e. 12% if payment is made after a delay of 30 days are not sustainable in law.

3. Having heard counsel for the appellant/Insurance Company at length, this Court is of the considered view that there is no scope for interference insofar as quantum of compensation is concerned.

4. Tribunal has accepted the age of the deceased Vishal to be 19 years, 5 months and 20 days at the time of accident. In such regard, Tribunal has noticed the age of the deceased mentioned as 20 years in the postmortem report, Ex.P17. Furthermore, the claimants/parents had produced a copy of

the matriculation examination certificate of the deceased Vishal as Ex.P33 and in which, his date of birth was recorded as 10.06.1995.

5. Even though, claimants had asserted that Vishal (since deceased) was a student and was also giving tuitions, helping out in agricultural work and earning Rs.25,000/- per month but no evidence had been adduced to substantiate such plea. Be that as it may, claimants had examined PW1 Ravinder, Head Clerk and who deposed that Vishal (since deceased) was a regular student studying in B.A. 2nd year in Gandhi Memorial National College, Ambala Cantt. Documents as Ex. P2 to P9 were adduced to prove the details of fee paid by Vishal to the College as also copies of his admission form and attendance sheets. The claimants had also placed on record an admit card, payment of receipt and form issued by the Haryana Staff Selection Commission and which clearly reflected that Vishal (since deceased) had applied for the post of Constable in Haryana Police through Haryana Staff Selection Commission.

6. Keeping in view that Vishal was approximately 20 years of age and was pursuing his education at the graduation level, the view taken by the Tribunal assessing a notional income of Rs.8000/- per month cannot be stated to be unjust and on the higher side. Rather, it is the submission made by learned counsel representing the appellant/Insurance Company himself that the minimum wages admissible to an unskilled worker as on the date of accident were Rs.7600/- per month.

7. The contention raised by counsel as regards addition in income towards future prospects on notional income to be not granted does not merit acceptance. Admittedly, deceased was pursuing his graduation. On

completion of his education, he would have certainly taken up some avocation as also would have explored avenues of employment. It has come on record that he had already applied for the post of Constable in Haryana Police and had subjected himself to a process of selection that had been initiated by the Haryana Staff Selection Commission. For working out a just and reasonable compensation, the Tribunal was obligated to lay a foundation and for which a notional income had to be assessed. This was for the reason that deceased was still pursuing his studies and was not actually earning. If the concept of assessing the notional is accepted, even a further increase thereupon towards future prospects will have to be taken into reckoning. In the case of **V. Mekala Vs. M. Malathi and another, 2014 (2) RCR (Civil) 880**, the Supreme Court has awarded 50% increase towards future prospects of income in an injury case and wherein the victim was a student of 11th standard and for whom a notional income had been assessed.

8. Submission made by counsel with regard to applying multiplier by taking into reckoning age of the claimant and not of the deceased is rejected in the light of the dictum laid down by the Apex Court in **National Insurance Company Limited Vs. Pranay Sethi & others,2017 (4) RCR (Civil) 1009.** Deceased was 20 years of age as on the date of accident and under such circumstances, Tribunal has rightfully applied the multiplier of 18 to the multiplicand.

9. This Court finds that even as regards conventional heads, the amount has rightfully been awarded by following the judgment of the Apex Court in **Pranay Sethi's case (supra).**

10. The submission raised by counsel with regard to awarding of

penal interest @ 12% on the compensation amount if there being a delay of more than 30 days in paying the compensation amount is well founded. Such issue is no longer *res integra*. The Supreme Court of India in the case of **National Insurance Company Limited Vs. Keshav Bahadur and others (Civil Appeal No.399 of 2004 (arising out of SLP (Civil) No.12305/2002, D/d.20.01.2004,** has held as follows:

> *"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 171 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 for higher rate of interest being enforced, in the manner directed by the Tribunal."*

11. In view of the above, the directions issued by the Tribunal in the award dated 18.04.2018 with regard to penal interest @ 12% in the eventuality of there being a delay in payment of compensation amount beyond the period of 30 days from passing of the award are set aside. Such

view is being taken even without issuing notice to the claimants/respondent Nos.1 and 2 herein so as to avoid burden of litigation expenses upon them. However, liberty is granted to the claimants to seek recalling of this order on the aspect of penal interest.

12. In view of the above, the instant appeal is disposed of by affirming the award dated 18.04.2018 granting compensation amount of Rs.12,39,600/- in favour of the claimants/respondents No.1 and 2 herein subject only to the modification of the award and by setting aside the directions for payment of penal interest.

13. Appeal is disposed of in the aforesaid terms.

26.07.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No