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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**FAO No.4056 of 2009 (O&M)
Date of Decision: 05.03.2019.**

The Oriental Insurance Company Ltd.

Appellant

Versus

Mandeep Kaur and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

None for respondents.

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AVNEESH JHINGAN, J (Oral):

The award dated 12.05.2009 passed by the Motor Accident Claims Tribunal, Rupnagar [for brevity 'the Tribunal'] has been assailed by the insurer of Bus bearing registration No. PB-11AA-6897 [hereinafter referred to as 'offending vehicle'] being aggrieved of quantum of compensation awarded by the Tribunal under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The legal heirs of Gurdeep Kaur [wrongly mentioned as 'Gurdev Singh' in first paragraph of the award] were claimants and the driver, owner & insurer [i.e. the Oriental Insurance Company Ltd.] of the offending vehicle were respondents before the Tribunal.

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.

The facts in brief are that a motor vehicular accident took place on 29.12.2007, the same proved fatal for Gurdeep Kaur, aged 39 years, she was travelling in the offending vehicle. The accident was caused due to the rash and negligent driving of the offending vehicle.

A claim petition under Section 166 of the Act was filed by the children of Gurdeep Kaur. In the claim petition, it was pleaded that she was doing house-hold work, stitching work and was giving tuitions, her earning was claimed as ₹5,000/- per month. The claimants failed to adduced any evidence with regard to occupation and monthly earning of the deceased. The Tribunal assessed notional income of the deceased as ₹36,000/- per annum, treating her to be a house maker and multiplier of '16' was applied. The Tribunal awarded a sum of ₹6,26,000/-, which included ₹50,000/- under the conventional heads.

Learned counsel for the appellant contends that the deceased was 39 years old at the time of accident and the Tribunal erred in applying multiplier of '16' instead of '15'. He further contends that the amounts awarded under the conventional heads are on the higher side and 1/3rd deduction for self-expenses has not been made, while calculating the compensation.

The contention raised by learned counsel for the appellant that multiplier of '15' be applied deserves acceptance in view of decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21,*** as the deceased was 39 years old at the time of accident.

In view of decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157,*** the claimants are entitled to ₹15,000/- each for funeral expenses and for loss of estate.

The contention raised by learned counsel for the appellant that there should be 1/3rd deduction for self-expenses lacks merit. This Court in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others, 2013(4) PLR 328***, has held that no deduction for self expenses is to be made in case of notional income of a house-wife. Relevant para is quoted below:

> *"15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according totheir age. The notional income of the housewife was takento be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case*

where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

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

Particulars	Amount (in ₹)
Notional annual income of the deceased as assessed by the Tribunal	36,000/-
Multiplier of '15'	**5,40,000/-**
Funeral expenses	**15,000/-**
Loss of Estate	**15,000/-**
Total	**5,70,000/-**

The award dated 12.05.2009 is modified to the extent that amount of ₹6,26,600/- awarded by the Tribunal is reduced to ₹5,70,000/-.

In the award, it was stated that if the amount is paid within two months, then interest @ 6% shall be payable and in case of failure, interest shall be @ 9% per annum.

The Tribunal erred in awarding conditional interest. The Supreme Court in ***National Insurance Co. Ltd. Vs. Keshav Bahadur and others 2004(2) SCC 370,*** held as under:-

"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."

As per order dated 13.08.2009, disbursement of compensation beyond 50% was stayed subject to the appellant's depositing the entire amount alongwith interest.

The claimant shall be entitled to receive the balance amount alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount and the appellant shall be entitled to withdraw the excess amount, by moving an application before the Tribunal.

None has put in appearance for the respondents. It is clarified that in case any grievance arises, they would be at liberty to revive the appeal by moving an application.

[AVNEESH JHINGAN]
JUDGE

March 05, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes