IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5451 of 2019(O&M)

Date of decision: 6.9.2019

New India Assurance Co. Ltd. …..Appellant

VERSUS

Annu @ Parmod and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ashwani Talwar, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

CM No.18155-CII of 2019

Prayer in this application is for condoning delay of 47 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Pushpa Devi Bhardwaj, Deputy Manager, the application is allowed. Delay of 47 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.5451 of 2019

Challenge in the present appeal has been directed against award dated 15.03.2019 passed by the Motor Accidents Claims Tribunal, Rohtak (in short 'the Tribunal') whereby compensation has been assessed on account of death of Anil Kumar in a motor vehicular accident that took place on 06.05.2018.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on issue No.1 as well as quantum of compensation assessed qua death of Anil Kumar. To challenge findings on issue No.1, it is argued that FIR in respect of the occurrence was registered at the statement of Rishab son of the deceased and claimant No.2 but Rishab has admitted that he is not an eye witness to the occurrence. It is further argued that as per version of Rishab, he was informed of the accident by Sant Ram Rathi but said Sant Ram Rathi has not been examined as a witness to discharge onus of issue No.1. Rather, claimants examined one Naveen Kumar to prove that accident is the result of rash and negligent driving of offending Scorpio but there is no reference to said Naveen Kumar in the testimony of Rishab. Further argued that Naveen has not been cited as a witness of the prosecution in criminal case and he had admitted that police never called him for recording his statement even though the police is stated to have reached the place of occurrence when the offending vehicle was standing at the spot. It is vehemently argued that the present is a case wherein the offending vehicle has been planted later to extract compensation from the insurance company.

With regard to quantum of compensation, counsel has two-fold submissions to make. It is argued that as per plea of the claimants, deceased was doing cloth business and plying auto rickshaws, taxis and doing sale and purchase of vehicles. It is argued that though the Tribunal has assessed annual income of the deceased on the basis of income tax returns produced on record but since the vehicles owned by the deceased would be available to his family for carrying on the business or sale, income assessed by the Tribunal needs reduction. Another submission made by counsel is that under issue No.4, the Tribunal has allowed simple interest at the rate of 7% per annum on the awarded amount of Rs.51,89,000/- but failure to pay the compensation within three months would entail adverse consequence of interest being charged at the rate of 8% per annum with yearly rests. It is argued that penal interest allowed by the Tribunal should not be allowed to sustain.

Rishab son of the deceased has never claimed himself to be an eye-witness to the occurrence. On the contrary, he has mentioned that on receipt of information with regard to the occurrence, the family reached the hospital where the deceased was taken after the unfortunate accident. In the given scenario, Rishab possibly could not know as to who was present at the spot at the time of accident. Naveen was examined to discharge onus of issue No.1 with regard to rash and negligent driving of offending vehicle by its driver. The testimony of Naveen has been reproduced on pages 13 and 14 of the grounds of appeal and read in extenso by counsel for the insurance company. Nothing material and tangible has been elicited in cross examination of Naveen to prove that he is an interested witness or knew family of the claimants much less he would be beneficiary in case the claim is accepted. The mere fact that Naveen did not offer to become a witness in the criminal case as he did not approach the police for recording his statement under Section 161 Cr.P.C. is not sufficient to reject his testimony. Perusal of the concluding lines of cross examination of Naveen would reveal that suggestions were put to the witness to the following effect:-

> "It is incorrect to suggest that the motorcycle of the deceased slipped on road due to his own rash and negligent driving resulting in his injuries. It is incorrect to suggest that the Scorpio of respondent No.1 hit the divider as he had swerved it in an attempt to save deceased Anil Kumar. It is incorrect to suggest that I have tendered false affidavit or that I have deposed falsely."

The aforesaid extract leaves no manner of doubt that even the respondents before the Tribunal had not denied availability of the Scorpio at the place of occurrence and the same goes a long way to negate plea of the insurance company that the offending vehicle has been planted later to extract compensation from the insurance company. Admittedly, on due investigation of FIR lodged by Rishab, the challan was presented against driver of the offending vehicle. The insurance company did not adduce any evidence to counter testimony of Naveen or substantiate its plea that offending vehicle has been planted as a result of collusion between the claimants and owner-cum-driver of offending vehicle. In this view of the matter, I find myself unable to accept contention of the insurance company that findings of the Tribunal on issue No.1 are faulty and merit intervention.

This brings the Court to quantum of compensation assessed by the Tribunal. The claimants examined a witness from the Income Tax Department namely Amit Kumar PW-3 and he produced ITR of the deceased for the years 2014-15 and 2015-16 Ex.P10 and P11 respectively. In view of income of the deceased reflected in the income tax returns, the Tribunal has assessed annual income of the deceased. Nothing has been proved on record that the business carried on by the deceased had been taken over by his family or they are earning the same amount. In the given circumstances, contention of the insurance company that income of the deceased has been wrongly assessed by the Tribunal is not tenable.

The Tribunal has allowed compensation payable with interest at the rate of 7% per annum from the date of petition till realization. However, failure of the respondents therein would entail payment of interest at the rate of 8% per annum with yearly rest. Penal interest imposed by the Tribunal cannot be allowed to sustain in the light of judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Keshav Bahadur, 2004 ACJ 648.** That being so, interest on the amount of compensation assessed by the Tribunal would be 7% per annum irrespective of whether the compensation is paid within three months or otherwise.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that interest awarded by the Tribunal has been assessed at 7% per annum without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of appeal filed by the insurance company would not cause prejudice to their right.

SEPTEMBER 6, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no