

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

FAO No. 4267 of 2012 (O&M)

Date of Decision: 18.03.2019

Smt. Ratni Devi and others

.....Appellants

Versus

Sunny Kumar Vig and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.S. Sharma, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.(oral)

The present appeal has been filed against award dated 12.12.2011 passed by the Motor Accident Claims Tribunal, Gurdaspur, (hereinafter referred to as 'the Tribunal').

Appellants are the mother, widow and three minor children of deceased-Anil Kumar Sandal. Respondents No. 1 to 3 are the driver, owner and insurer (i.e. Reliance General Insurance Company Limited) of Toyota Qualis bearing registration No. PB-08-AH-1039 (for short 'the offending vehicle').

The factum with regard to the accident is not disputed by the parties.

A motor vehicular accident took place on 2.6.2008. The accident proved fatal for Anil Kumar Sandal. The accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer were held jointly and severally liable to pay compensation.

In the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') the Tribunal awarded a sum of ₹ 17,28,000/- as compensation. It was further ordered that in case the payment is not made within three months, the claimants shall be entitled to interest at the rate of 9% per annum.

In the claim proceedings, it was proved that the deceased was 45 years of age, he was working in Indian Army. His salary was proved as ₹ 17,805/-per month, multiplier of 12 was applied and 1/3rd deduction for self-expenses was made.

The contentions raised by learned counsel for the appellants are five fold:

- (i) No future prospects have been awarded;
- (ii) Multiplier of 12 has wrongly been applied as deceased was 45 years of age;
- (iii) The Tribunal erred in making 1/3rd deduction for self-expenses as deceased was survived by five dependants;
- (iv) No interest has been awarded and only conditional interest has been awarded and
- (v) Nothing has been awarded under conventional heads.

Learned counsel for the insurer defended the award and resisted any further enhancement. He contended that the income tax payable be deducted from the salary.

The contention raised by learned counsel for the appellants deserves acceptance.

The deceased was in the age group of 40-45 years. He was having a permanent job and in consonance with the decision of the Supreme Court in

National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017

SC 5157, 30% future prospects are awarded. The claimants are entitled to ₹ 15,000/- each for funeral expenses and loss of estate and ₹ 40,000/- is awarded to the widow for loss of consortium.

The deceased was 45 years of age and was survived by five dependants and as per the decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21**, multiplier of 14 is applied and 1/4th deduction for self-expenses is made.

As the quantum of compensation is being revisited, the income tax payable on the salary of the deceased is deducted.

The Supreme Court in ***Manasvi Jain vs. Delhi Transport Corporation, (2014) 3 SCC 22*** has held as under :-

“12. This Court in Shyamwati Sharma & Ors. Vs. Karam Singh & Ors., 2010(3) R.C.R. (Civil) 741 : (2010) 12 SCC 378, while considering the issues of deduction of taxes, contributions etc., for arriving at the figure of net monthly income, held that “while ascertaining the income of the deceased, any deductions shown in the salary certificate as deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income. The deduction towards income tax/surcharge alone should be considered to arrive at the net income of the deceased.”

In the relevant assessment year, the nil slab was ₹ 1,10,000/-. The annual salary of the deceased comes to ₹ 2,13,660/- and there were deduction available to the assessee under various provisions of the Income Tax Act, 1961. Considering the available deductions, taxable income would be appropriately ₹ 28,000/- and taxable in 10% slab. An amount of ₹ 3000/- is deducted as income tax from the annual income.

In view of the above discussion, the compensation is recalculated as under:

Sr. No.	Particulars	Amount awarded
1.	Annual salary	₹ 2,13,660/-
2.	Income tax payable	₹ 3000/- ₹ 2,10,660/-
3.	30% future prospects	₹ 63,198/- ₹ 2,73,858/-
4.	1/4 th deduction for self expenses	₹ 68,465/- ₹ 2,05,393/-
5.	Multiplier of 14	₹ 28,75,502/-
6.	Conventional heads	₹ 70,000/-
7.	Total	₹ 29,45,502/-

The award dated 12.12.2011 is modified to the extent that amount awarded of ₹ 17,28,000/- by the Tribunal is enhanced to ₹ 29,45,502/-.

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.

In the absence of special reasons, the compensation is to be awarded alongwith statutory interest as provided under Section 171 of the Act. 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.

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 law laid down by the Supreme Court and considering the banks' rate of interest at the relevant time, the claimants shall be entitled to interest on the entire amount of compensation alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

Disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

18.03.2019

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Whether speaking/reasoned	Yes
Whether Reportable:	Yes