IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 666 of 2013

Date of Decision: 09.04.2019

Sital Kaur and another

.......Appellants

Versus

Butta Balkar Singh and others

......Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vikas Chatrath, Advocate and
Mr. Khushkaran Kumar, Advocate
for the appellants.

Mr. Rajinder Sharma, Advocate
for respondent No.2.

Mr. Banni Thomas, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.(oral)

The present appeal is against award dated 17.9.2012 passed by the Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as 'the Tribunal')

The appellants are the widow and major son. The driver of truck bearing registration No.PB-02-V-9977 (for short 'the offending vehicle'), owner and insurer (i.e. Oriental Insurance Company) have been arrayed as respondents No. 1 to 3 and two daughters of deceased have been arrayed as respondents No.4 and 5.

The facts are summarised below.

On 12.12.2008, Baldev Singh along with Amrit Singh was going to Garhshankar on their scooters and on their way the offending vehicle struck the scooter bearing registration No.PB-24-6469 driven by Baldev Singh. As a result of the impact Baldev Singh fell down and the tyre of the truck passed over his body and he died at the spot. FIR No. 237 dated 12.12.2008 was registered at Police Station Garhshankar.

In the claim petition, it was pleaded that the deceased was 55 years of age and after his retirement from Army and Punjab National Bank, he was doing dairy farming and earning ₹ 12,000/- per month. The claimants failed to prove the age of the deceased. The Tribunal considering that he was employed in the bank and was retired, his age was considered as 61 years. After accounting for two pensions, the income was assessed as ₹ 7000/- per month, 1/3rd deduction for self-expenses was made and multiplier of 7 was applied. The Tribunal awarded a sum of ₹ 4,07,000/- which included ₹ 5000/-each for loss of consortium, funeral expenses and for loss of estate. The Tribunal ordered that the payment of compensation awarded be made within three months failing which the claimants will be entitled to 7% interest per annum from the date of passing of the award till realisation of the amount.

The Tribunal considering the facts and appreciating the evidence adduced held that the accident occurred due to rash and negligent driving of the offending vehicle and driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

Learned counsel for the appellants raises two issues firstly that the amount awarded under the conventional heads are on lower side and the Tribunal erred in awarding conditional interest.

Learned counsel for the respondents defend the award and resist any further enhancement.

Taking into consideration the 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 loss of estate and funeral expenses and ₹ 40,000/- for loss of consortium to the widow.

The award dated 17.9.2012 is modified to the extent that amount of ₹ 4,07,000/- awarded by the Tribunal is enhanced by ₹ 55,000/-.

The Tribunal has not recorded any reasons for not awarding statutory interest under Section 171 of the Act.

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.*

The claimants shall be entitled to interest on the entire amount at the rate of 6% from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed.

(AVNEESH JHINGAN)
JUDGE

09.04.2019
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No