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

**FAO No. 519 of 2015
DECIDED ON: APRIL 05, 2019**

SUKHDEEP KAUR AND OTHERS

APPELLANTS

VERSUS

BALJIT SINGH AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vivek Suri, Advocate
for the appellants.

Mr. P.S. Bedi, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 01.11.2014 passed by the Motor Accident Claims Tribunal, Patiala (for brevity 'the Tribunal') has been assailed by the widow, two minor sons and parents of Daljit Singh @ Inderjit Singh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The driver, owner and insurer (i.e. United India Insurance Company Ltd.) of truck/oil tanker bearing registration No. PB-10-CA-7553 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents

No.1 to 3 respectively in the appeal.

The factum of accident has not been disputed by the parties. A motor vehicular accident took place on 10.12.2013 and the same proved fatal for Daljit Singh @ Inderjit Singh, 37 years of age. He succumbed to the injuries on 12.12.2013. The accident was caused due to the rash and negligent driving of the offending vehicle. FIR was registered at Police Station Banur. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

In the claim proceedings, it was claimed that the deceased was working as Mason and was earning ₹15,000/- per month but the claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed the monthly income of the deceased as ₹8000/- per month; 1/4th deduction for self-expenses was made, as the deceased was survived by five dependants and multiplier of '15' was applied considering the age of the deceased as 37 years. The Tribunal awarded a sum of ₹13,05,000/-. The amount awarded included ₹1,00,000/- for loss of consortium, ₹25,000/- for funeral expenses and ₹1,00,000/- for loss of love and affection. The interest awarded was conditional i.e. @ 6% per annum, if the amount is paid after the expiry of period of two months.

Heard learned counsel for the parties and perused the relevant documents produced by them.

Learned counsel for the appellants contends that no future prospects have been awarded. He argues that the Tribunal erred in awarding conditional interest.

Learned counsel for the insurer defends the award and argues that the amounts under the conventional heads are on the higher side. No amount is to be awarded for loss of love and affection.

Three issues involved in the present appeal are:-

- No future prospects have been awarded;
- Tribunal has awarded conditional interest; and
- Amounts awarded by the Tribunal under conventional heads are not in consonance with the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR (2017) SC 5157***.

Having due regard to the decisions of the Supreme Court in ***Pranay Sethi's*** case (supra) and ***Hem Raj Vs.Oriental Insurance Company Ltd. 2018 (2) PLR 480***; 40% future prospects are awarded as the deceased was in the age group of 30-40 at the time of accident and fell in category of self-employed or a person having established income.

There is no dispute between the parties with regard to loss of dependency i.e. ₹10,80,000/- calculated by the Tribunal. 40% of the said amount i.e. ₹4,32,000/- is awarded as future prospects.

As the quantum of compensation is being revisited, it would be appropriate that amounts under the conventional heads are awarded as per decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimants shall be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium. No amount is awarded for loss of love and affection.

The net effect is that the amounts awarded under the conventional heads are reduced by ₹1,55,000/-.

The award dated 01.11.2014 is modified to the extent that amount of ₹13,05,000/- awarded by the Tribunal is enhanced by ₹2,77,000/-.

The Tribunal erred in awarding conditional interest by stating that if the payment is made after the expiry of two months, interest @ 6% shall be payable.

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."

It was held that such a condition that in case of failure of payment within stipulated time, higher rate of interest with retrospective effect, cannot be sustained.

Considering the banks' rate of interest at the time of accident, the claimants shall be entitled to the entire amount (including enhanced amount) alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

APRIL 05, 2019
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Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No