

229

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

\*\*\*\*

**FAO No.11 of 2017 (O&M)  
Date of Decision : 01.05.2019**

National Insurance Company Limited

Appellant

Versus

Pawna Devi and others

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Ram Avtar, Advocate  
for the appellant.

Mr. S.K. Yadav, Advocate  
for respondents No.1, 4 and 5.

Mr. Amit Gupta, Advocate  
for respondents No.2 and 3.

\*\*\*\*

**AVNEESH JHINGAN, J (Oral)**

This appeal is filed by the insurer of Car bearing registration No. HR-29P-9738 [hereinafter referred to as 'offending vehicle'] against award dated 19.08.2016 passed by the Motor Accident Claims Tribunal, Faridabad [for brevity 'the Tribunal'].

The claimants before the Tribunal were widow, two minor children and old parents of Kamir Chand (deceased). The driver, owner and insurer of the offending vehicle were respondents No.1 to 3 before the Tribunal.

The facts emanating from the record are that on 09.01.2016, Kamir Chand was driving motorcycle bearing registration No. HR-29AG-1770. When he reached near bye-pass

road, Sector 14, Faridabad, the offending vehicle rammed into the motorcycle. Due to the impact, Kamir Chand sustained grievous injuries. He was taken to Metro Hospital, where he succumbed to the injuries. FIR No. 20, dated 10.01.2016 was registered.

In the claim petition filed, it was pleaded that the deceased was 40 years old, he was working as an Import-Export Executive with M/s Tulip Shipping Services, Delhi. His income was proved as ₹18,000/- per month. The Tribunal applied multiplier of '15', considering the deceased as 40 years old. The Tribunal awarded ₹33,75,000/- alongwith interest @ 9% per annum. The amount awarded included ₹1,00,000/- for loss of consortium; ₹10,000/- for loss of estate and ₹25,000/- for funeral expenses. It was ordered that amount of compensation be disbursed within 30 days, failing which the insurer shall be liable to pay interest @ 12% per annum.

The Tribunal after considering the facts and appreciating the evidence adduced came to the conclusion that the accident was result of rash and negligent driving of the offending vehicle. The insurer was held liable to pay the compensation.

Heard learned counsel for the parties, perused the paper book and relevant record.

Learned counsel for the appellant contends that income of the deceased assessed is on the higher side as Vouchers of payments to the deceased are not worth reliance as

M/s Tulip Shipping Services, Delhi is not registered with Employee's State Insurance (ESI) and Employees' Provident Fund Organization (EPFO). He further contends that no deduction for self-expenses has been made, amounts awarded under the conventional heads are not as per decision of Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157** and rate of interest is also on the higher side.

Learned counsel for the claimants argues that occupation and monthly earning of the deceased was duly proved by producing the Salary Certificate, Vouchers of payments, Attendance Register and by deposition of Proprietor of M/s Tulip Shipping Services. He further argues that no future prospects have been awarded.

From the perusal of the record, it is forthcoming that attendance register of M/s Tulip Shipping Services was duly produced as Ex.P-10. Certificate was exhibited as Ex.P-18, as per which the deceased was working with the Concern since 01.07.2014 and was getting salary of ₹18,000/- per month. The Vouchers for the months from August, 2015 to January, 2016 were exhibited as Ex.P-11 to Ex.P-17. It would be pertinent to note that the said Vouchers carry signatures of deceased on the revenue stamps.

During the pendency of this appeal, vide order dated 28.09.2018, counsel for the claimants was directed to produce

documents regarding qualification of the deceased and to verify whether the Concern with which the deceased was working, was filing any Income Tax Return for the relevant period.

Today, learned counsel for the claimants produces a Certificate in the Court showing that the deceased's qualification was B.Com. The documents are taken on record as Mark 'X'. He further states that M/s Tulip Shipping Services has refused to cooperate with regard to Income Tax Returns. The employer normally will not share the information with regard to his Income Tax Returns with the claimants.

The evidence produced before the Tribunal with regard to employment and monthly earning was not rebutted by the insurer of the offending vehicle. No challenge was made to the Salary Certificate or the Attendance Register. The Proprietor of M/s Tulip Shipping Services deposed as PW-3, the deceased was employee of private Concern, for the default of his employer that it was not registered with ESI and EPFO, the claimants cannot be deprived of the compensation as they have discharged their onus to prove monthly earning of the deceased.

The Tribunal erred in not making deduction for self-expenses. In consonance with the decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21**, 1/4<sup>th</sup> deduction for self-expenses has to be made, as the deceased is survived by five dependents.

As per decision of the Supreme Court in **National**

**Insurance Company Limited Vs. Pranay Sethi and others AIR**

**2017 SC 5157**, 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.

The compensation was calculated by the Tribunal without adding future prospects, the said omission balanced the compensation by not making deduction for self-expenses. Since, the deduction for self-expenses is being made, it would be appropriate that 25% future prospects are awarded in consonance with the decisions of the Supreme Court in **Pranay Sethi's case** (supra) and **Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480**, as the deceased was not below 40 years of age and fell in the category of a person having fixed wages.

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

| Particulars                                   | Amount (in ₹) |
|-----------------------------------------------|---------------|
| Monthly income of the deceased as assessed    | 18,000/-      |
| 25% Future Prospects                          | 4,500/-       |
| Sub Total                                     | 22,500/-      |
| 1/4 <sup>th</sup> deduction for self expenses | 5,625/-       |
| Monthly Dependency                            | 16,875/-      |
| Annual Dependency                             | 2,02,500/-    |
| Applying multiplier of '15'                   | 30,37,500/-   |
| Funeral Expenses                              | 15,000/-      |
| Loss of Estate                                | 15,000/-      |
| Loss of consortium to the widow               | 40,000/-      |
| Grand Total                                   | 31,07,500/-   |

The award dated 19.08.2016 is modified to the extent

that amount of ₹33,75,000/- awarded by the Tribunal is reduced to ₹31,07,500/-.

The Tribunal had awarded compensation alongwith interest @ 9% per annum with the condition that in case of failure of disbursement of compensation within 30 days, insurer shall be liable to pay interest @ 12% 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.*

Keeping in view the bank's rate of interest prevalent at the time of accident, 9% interest is awarded to the claimants.

The claimants shall be entitled to compensation of ₹31,07,500/- alongwith interest @9% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is disposed of accordingly.

[AVNEESH JHINGAN]  
JUDGE

May 01, 2019  
*pankaj baweja*

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