IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7379 of 2016
DECIDED ON: FEBRUARY 26, 2019

JASLEEN KAUR AND OTHERS

.....APPELLANTS

VERSUS

KAMAL SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Aayush Gupta, Advocate
for the appellants.

Mr. Sanjeev Kodan, Advocate
for the respondent No.3-Insurance Company.

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AVNEESH JHINGAN J. (ORAL)

The award dated 20.05.2016 passed by the Motor Accident Claims Tribunal, Ludhiana (for brevity 'the Tribunal') has been assailed by the legal heirs of Avtar Singh (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act')

The widow, two minor children and mother of Avtar Singh are the appellants. The driver, owner and insurer (i.e. Reliance General Insurance Company Ltd.) of truck bearing registration No. HP-64-3981 (hereinafter referred to as 'offending vehicle'); have been arrayed as respondents no. 1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that a motor vehicular accident took place on 27.06.2014. The said accident proved fatal for Avtar Singh aged 33 years. FIR No. 154, dated 30.06.2014 was registered at Police Station Samrala, Ludhiana.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced, held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded compensation of ₹9,93,000/- alongwith conditional interest. It was ordered that the said amount shall be paid within three months and in case of default, claimants shall be entitled the said amount alongwith interest @6% per annum from the date of filing of claim petition till actual realization of the awarded amount. 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.

It would be pertinent to note that an appeal bearing FAO No. 4079 of 2016 challenging the quantum of compensation, filed by the insurer was dismissed by this Court vide order dated 08.08.2016.

In the claim petition filed before the Tribunal, the monthly income of the deceased was assessed as ₹6000/- by treating him to be an un-skilled labourer, as the claimants failed to substantiate the occupation and earning of the deceased. The Tribunal made 1/3rd deduction for self-expenses and multiplier of 16 was applied.

The grievance of learned counsel for the appellants is that no future prospects have been awarded. He contends that 1/3rd deduction for self-expenses had wrongly been made instead of 1/4th. He further argues that the amount under the conventional heads should be made in consonance with the decision of the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi and others;*** ***2017 (4) RCR (Civil) 1009***

Learned counsel for the insurer defends the award and resisted any further enhancement. He argues that the amounts awarded under the conventional heads are on higher side and no amount be awarded for loss of love and affection.

The issues involved in the present appeal are squarely covered by the decisions of the Supreme Court in ***Pranay Sethi's case*** (supra) and ***Hem Raj vs. Oriental Insurance Company*** **Ltd.** ***2018 (2) PLR 480;*** **and** ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another; (2009) 6 SCC 121.***

The deceased was below 40 years at the time of accident and is covered in the category of self-employed or having fixed wages, thus, 40% future prospects are awarded. Claimants are also entitled to ₹15000/- each for funeral expenses and for loss of estate. Further an amount of ₹40,000/- is awarded to the widow for loss of consortium.

In consonance with the decision of the Supreme Court in ***Smt. Sarla Verma's case (supra),*** 1/4th deduction for self-expenses is to be made, as the deceased was survived by four dependants.

There is no dispute between the parties with regard to the income assessed, age of the deceased and multiplier applied of 16.

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

	Head	**Compensation awarded**
(i)	Monthly Income	₹ 6000/- per month
(ii)	Future prospects at 40%	₹ 2400/- per month
(iii)	Total Income	₹ 8400/- per month
(iv)	Deduction of personal expenses	₹ 2100/- (i.e. 1/4th of total income)
(v)	Multiplier	16 (as per age of deceased)
(vi)	Loss of income	6300x12x16= ₹12,09,600/-
(vii)	Funeral expenses	₹15,000/-
(viii)	Loss of estate	₹15,000/-
(ix)	Loss of consortium	₹40,000/-
	Total Compensation awarded	₹12,79,600/-

The award dated 20.05.2016 is modified to the extent that amount of ₹9,93,000/- awarded by the Tribunal is enhanced to ₹12,79,600/-.

There is no reason given by the Tribunal for awarding conditional interest and not awarding statutory interest under Section 171 of the Act. The awarding of conditional interest has not been upheld by the Supreme Court in ***National Insurance Co. Ltd. Vs. Keshav Bahadur and others 2004(2) SCC 370.*** It was held:-

> *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 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."

The appellants shall be entitled to the entire amount including the enhanced amount alongwith interest @7.5% per annum from the date of filing of the claim petition till the realization of the amount.

The appeal is allowed in the afore-said terms.

(AVNEESH JHINGAN)
JUDGE

FEBRUARY 26, 2019
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No