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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.3046 of 2017
Date of Decision : 26.03.2019

Promila Sharma and others

Appellants

Versus

Vinod Kumar Sharma (through LRs) and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Arora, Advocate
for the appellants.

Mr. Amit Kundra, Advocate
for respondent No.3-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 27.10.2016 passed by the Motor Accident Claims Tribunal, Jalandhar [for brevity 'the Tribunal'] has been assailed by the widow and two children of Vishav Kirti Sharma seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The driver (through legal heirs), owner and insurer (i.e. The National Insurance Company Ltd.) of Verna Car bearing registration No. PB-08BL-7404 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

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 be made as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR (2017) SC 5157.***

The factum of accident has not been disputed by the parties. A motor vehicular accident took place on 20.08.2012 (though in the first paragraph of the award, date of accident has been mentioned as 20.08.2013) and the same proved fatal for Vishav Kirti Sharma, aged 52 years. The accident was caused due to the 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 compensation.

In the claim proceedings, it was proved through Income Tax Returns that the deceased was earning ₹1,80,000/- per annum; 1/3rd deduction for self-expenses was made as the deceased was survived by three dependents and keeping in view the fact that deceased was 52 years old at the time of accident, multiplier of '11' was applied. The Tribunal awarded a sum of ₹15,32,000/-. The amount awarded included ₹1,00,000/- for loss of consortium and ₹25,000/- for funeral expenses. The interest awarded was conditional i.e. @ 6% per annum, if the amount is paid within three months from the date of order and in case of failure, interest shall be paid @ 8% per annum.

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.

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;*** 10% future prospects are awarded as the deceased was in the age group of 50-60 at the time of accident and falls in the 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. ₹13,20,000/- calculated by the Tribunal. 10% of the said amount i.e. ₹1,32,000/- 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.

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

The award dated 27.10.2016 is modified to the extent that amount of ₹15,32,000/- awarded by the Tribunal is enhanced by ₹77,000/-.

The Tribunal erred in awarding conditional interest by stating that if the payment is made within three months interest shall be paid @ 6% per annum and in case of failure, interest @ 8% 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

March 26, 2019
pankaj baweja

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