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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.3080 of 2017 (O&M)
Date of Decision: 14.05.2019

Sobha Devi and others

Appellants

Versus

Jagjit Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

Mr. Paul S. Saini, Advocate for respondent No.3.

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<u>AVNEESH JHINGAN, J (Oral):</u>

The award dated 21.07.2016 passed by the Motor Accident Claims Tribunal, Faridkot [for brevity 'the Tribunal'] has been assailed by widow and two minor children of Madhwa @ Madho Bind 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. The New India Insurance Company Ltd.) of Bus bearing registration No. PB-04V-2485 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The issues involved in the present appeal are that (i) no future prospects have been awarded; (ii) amounts under the conventional heads be awarded as per decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and (iii) the Tribunal erred in awarding conditional interest.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 04.10.2015. The accident proved fatal for Madhwa, aged 35 years. The accident was result of rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. FIR No.185, dated 04.10.2015 was registered at Police Station Kotkapura.

In the claim proceedings, it was pleaded that the deceased was a labourer and was earning ₹6,000/- per month. The claimants failed to prove earning of the deceased. The Tribunal assessed monthly income of the deceased as ₹4,500/- per month; multiplier of '16' was applied and $1/3^{rd}$ deduction for self-expenses was made as the deceased was survived by three dependents. The Tribunal awarded compensation of ₹6,11,000/-. The amount awarded included ₹15,000/- for loss of consortium and ₹20,000/- for funeral expenses. It was ordered that amount awarded shall be paid within two months, failing which, claimants shall be entitled to compensation alongwith interest @ 9% per annum from the date of filing of the claim petition till realization of the amount.

Heard learned counsel for the parties and perused the relevant documents.

Learned counsel for the appellants argues that the no future prospects have been awarded; amounts awarded under the conventional heads are on the lower side and no amount has been awarded for loss of estate. The grievance raised is that no interest has been awarded as per Section 171 of the Act and the Tribunal erred in awarding conditional interest.

Learned counsel for the insurer defends the award and resisted any further enhancement.

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 below 40 years of age and fell in the category of self-employed or having fixed wages. The claimants are also 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 amount of ₹35,000/- awarded under the conventional heads is enhanced to ₹70,000/-.

As there is no challenge to the loss of dependency i.e. ₹5,76,000/- calculated by the Tribunal, 40% of the said amount i.e. ₹2,30,400/- is awarded towards future prospects.

The award dated 21.07.2016 is modified to the extent that amount of ₹6,11,000/- awarded by the Tribunal is enhanced by ₹2,65,400/-.

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 Tribunal erred in not awarding interest as per Section 171 of the Act, which is statutory in nature. 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."

In view of above law laid down by the Supreme Court and keeping in view the banks' rates of interest prevalent at the time of accident, the claimants are entitled to interest @ 7.5% on the entire amount including enhanced amount 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

May 14, 2019
pankaj baweja

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