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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

****

FAO No.4284 of 2017
Date of Decision: 24.01.2019

Palwinder Singh and another

Appellants

Versus

Ramandeep Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Bhanu Pratap Singh, Advocate
for the appellants.

Mr. M.S. Atwal, Advocate
for respondent No.2.

Mr. Rajesh Verma, Advocate
for respondent No.3.

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AVNEESH JHINGAN, J (Oral):

The present appeal has been preferred seeking enhancement of compensation for death of Harbans Singh, aged 70 years. The Motor Accident Claims Tribunal, Hoshiarpur [for brevity 'the Tribunal'] assessed earning of the deceased as ₹13,000/- per month. The claimants were legal heirs of the deceased. The Tribunal assessed compensation of ₹7,73,789/-.

The driver, owner and insurer (i.e. Bajaj Allianz General Insurance Company Ltd.) of car bearing registration No. PB-07AM-5848 [hereinafter referred to as 'offending vehicle'] were respondents

No.1 to 3 before the Tribunal.

The brief facts necessary for adjudication of the present appeal are that on 17.04.2015, Harbans Singh was riding motorcycle bearing registration No. PB-21D-8964. He was followed by Santokh Singh on a separate Scooter. On his way, Harbans Singh was struck by a rashly and negligently driven offending vehicle. As a result of the impact, he fell down and sustained grievous injuries. He was taken to Civil Hospital from where he was taken to Satyam Hospital, Jalandhar where he died on 28.04.2015. FIR No. 97, dated 18.04.2015 was registered at Police Station Dasuya, Distt. Hoshiarpur.

A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. It was proved before the Tribunal that monthly income of the deceased was ₹13,000/- and he was 70 years old at the time of accident.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The insurer was held liable to pay the compensation. The Tribunal awarded ₹7,73,789/- which included ₹10,000/- for funeral expenses and ₹2,41,789/- for medical expenses. While calculating the compensation, 1/3rd deduction for self-expenses was made and multiplier of '5' was applied.

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

Learned counsel for the appellants contends that amount awarded for funeral expenses is on the lower side and no amount for loss of estate has been awarded. The grievance raised is that no interest has been awarded, but only conditional interest has been awarded.

Learned counsel for the insurer while defending the award resisted any further enhancement. He submits that ₹4,00,000/- was paid to the claimants during the pendency of the claim petition and the same was adjusted by the Tribunal towards the total amount awarded.

There is no dispute between the parties with regard to loss of dependency calculated as ₹5,22,000/- by the Tribunal.

The contentions raised by learned counsel for the appellants deserve acceptance. Having due regard to the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157,*** the claimants are entitled to ₹15,000/- each for funeral expenses and loss of estate. As a result, the amount awarded of ₹7,73,789/- is enhanced to ₹7,93,789/-.

The Tribunal had awarded the conditional interest @ 6% per annum only in case the amount is not paid by the insurer within three months. No reasons have been recorded by the Tribunal for not awarding the interest 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.*
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> *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.*
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> *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.”*

Keeping in view the statutory provision and decision of the Supreme Court, the claimant shall be entitled to amount awarded alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount. Needless to add that an amount of ₹4,00,000/- paid to the claimants during the pendency of the claim petition shall carry interest from the date of filing of the claim petition till the date of its payment. The insurer shall make requisite payment alongwith interest within six weeks from receipt of certified copy of this order.

The appeal is allowed.

[AVNEESH JHINGAN]
JUDGE

January 24th, 2019
pankaj baweja

1. Whether speaking/ reasoned : **Yes**/ No
2. Whether reportable : Yes/ **No**