IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7104 of 2017
Date of decision: 10.5.2019

Smt. Akbari and others

.. Appellants

v.

Hari Charan alias Hari Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Chetan Kapoor, Advocate for
Mr. Ashish Gupta, Advocate for the appellants.

Mr. Vikas Singh, Advocate for
Mr. Abhimanyu Singh, Advocate for respondents No. 1 and 2.

Mr. Rahul Pathania, Advocate for
Mr. R. C. Kapoor, Advocate for the Insurance Company.

...

AVNEESH JHINGAN, J. (Oral)

The award dated 24.3.2017 passed by the Motor Accident Claims Tribunal, Mewat (for short, 'the Tribunal') has been assailed by the parents and sister of Nazim (deceased) seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The respondents in the appeal are the driver of truck bearing registration No. HR-55W-1964 (hereinafter referred to as 'the offending vehicle'), owner and the insurer (i.e. The New India Assurance Company Limited) of the offending vehicle.

The issues arising in the present appeal are that no future prospects have been awarded and the amounts awarded under the conventional heads be made as per the decision of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, AIR 207 SC 5157**.

The factum of accident is not disputed by the parties. A motor vehicular accident took place on 16.5.2016. The accident proved fatal for Nazim. The accident was result of rash and negligent driving of the offending vehicle. The insurer of the offending vehicle was held liable to pay the compensation.

In the claim petition, it was pleaded that the deceased was a milkman and was earning ₹20,000/- per month. The claimants failed to prove the occupation and earning of the deceased. The Tribunal assessed his monthly earning as ₹8,000/-, ½ deduction for self-expenses was made as he was a bachelor and multiplier of '18' was applied considering the age of the deceased as 18 years. A sum of ₹11,89,000/- was awarded along with interest @ 7.5% per annum if the amount is paid within 30 days and in default @ 9% per annum. The amount awarded included ₹25,000/- towards funeral expenses and ₹1,00,000/- each for loss of estate, loss of love and affection and loss of expectation of life of the deceased.

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. No other issue has been raised.

Learned counsel for the insurer contends that the amounts under the conventional heads be awarded as per decision of the Supreme Court in **Pranay Sethi's case (supra)** and no amount be awarded for loss of love and affection and towards loss of expectation of life.

Having due regard to the decisions of the Supreme Court in **Pranay Sethi's case (supra)** and **Hem Raj v. Oriental Insurance Company Ltd., 2018(2) PLR 480** as the deceased was below 40 years and fell in the category of self employed or person having fixed wages, 40% future prospects are awarded. As there is no challenge to the loss of dependency i.e. ₹8,64,000/- calculated by the Tribunal, 40% of the said amount i.e. ₹3,45,600/- is awarded towards future prospects.

As the quantum of compensation is being re-visited, the amounts awarded under the conventional heads are made in consonance with the decision of the Supreme Court in **Pranay Sethi's case (supra).** The claimants are awarded ₹15,000/- each for funeral expenses and for loss of estate. No amount is awarded for loss of love and affection and expectation of life.

The net result is that the amount awarded by the Tribunal is enhanced by ₹50,600/-.

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 claimants shall be entitled to the enhanced amount along with interest @ 7.5% per annum on the entire amount from the date of filing the claim petition till its realisation.

The appeal is allowed in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

10.5.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No