113

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
****

RSA No.748 of 2014 (O&M)
XOBJS No.9-C of 2018
Date of Decision: 18.11.2019
****

Union of India and others

..... Appellants

Versus

Surjeet Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Nitin Kumar, Advocate,
for the appellants.

Mr. Om Parkash Sharma, Advocate,
for the Cross-Objector/respondent.

SUDIP AHLUWALIA, J. (ORAL)

1. Ld. Counsel for the respondent has tendered a Calculation Sheet from his side, according to which, the balance payable to his client comes to ₹4,82,395/-, and not ₹3,27,300/- as mentioned in the Calculation Sheet earlier drawn up by the appellants' side. Thereafter, with reference to the requirement noted in the last order dated 06.11.2019, Ld. Counsel for the respondent has cited the decision of the Hon'ble Supreme Court in ***Appeal (Civil) No.4570 of 2006*** titled as "***Gurpreet Singh Vs. Union of India***", passed on 19.10.2006, wherein the Hon'ble Apex Court has observed:-

> *"42. What is to happen when a part of the amount awarded by the reference court or by the appellate court is deposited pursuant to an interim order of the appellate court or of the further appellate court and the awardee is given the liberty to withdraw that amount?*

> *In such a case, the amount would be received by the decree holder on the strength of the interim order and the appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein. In such a case, if the appeal is disposed of in his favour, the decree holder would be entitled to appropriate the amount already received by him pursuant to the interim order first towards interest then towards costs and the balance towards principal as on date of the withdrawal of the amount and claim interest on the balance amount of enhanced compensation by levying execution. But on that part appropriated towards the principal, the interest would cease from the date on which the amount is received by the awardee. Of course, if while passing the interim order, the court had indicated as to how the deposited amount is to be appropriated, that direction will prevail and the appropriation could only be done on the basis of that direction."*

2. It is a matter of record that an amount of ₹12,75,560/- was deposited by the appellants and vide interim order dated 21.07.2014, this Court had permitted the respondent to withdraw an amount of ₹4,00,000/- with interest thereon. Now, in terms of the decision cited by the respondent, the direction of the Court regarding appropriation of the deposited amount is to prevail upon instead of interpreting that the claimant in the circumstances, would be entitled to first appropriate the interest, then the costs and only thereafter the principal amount.

3. In the present case, admittedly, an amount, far in excess of ₹4,00,000/-, had been deposited which was certainly inclusive of the interest upon the same which had accrued till that date. So, withdrawal of an

amount of ₹4,00,000/- only would not entitle the claimant to appropriate the same towards mitigating the accumulated interest because he was well within his liberty to withdraw that amount along with the interest thereupon.

4. In the given circumstances, therefore, the decision cited on behalf of the respondent will not be helpful to him.

5. The actual justified entitlement of the respondent in the circumstances would be governed by the decision of the Hon'ble Supreme Court in "***Union of India Vs. Rina Devi***", ***2018(3) R.C.R. (Civil) 40***, which was subsequently relied upon by a Coordinate Bench of this Court in ***FAO No.3926 of 2014*** titled as "***Nirmala Devi and others Vs. Union of India***" decided on 20.05.2019, which has been cited on behalf of the appellants, a reference to which, has been noted in the earlier order passed on 17th October, 2019. The relevant extracts from the said decision are set out as below:-

> *"Next question would be as to what should be the just and proper compensation amount in this case. Of course, at the time of accident, such compensation amount as per schedule attached with the Railway Accident and Untoward Incident (Compensation) Rules, 1990, was Rs.4 Lacs. However, in* ***Rina Devi (Supra),*** *the Hon'ble Supreme Court has held that enhanced compensation has to be awarded if enhanced amount of compensation as per amendment brought in the statute, if available of the date of Award, is greater than the amount which was payable on the date of accident along with interest. In the present case no Award has been pronounced by the Tribunal rather the claim application was dismissed. However, the compensation amount is being allowed by the present decision, therefore, in my considered view, the higher*

> *amount which would be available on the date of present decision would be the actual, just and proper compensation amount. In such a situation, if 4 Lacs is added with even 9% interest per annum interest from the date of accident, the sum total would be lesser than Rs.8 Lacs, i.e., the amount which is available as per the amendment brought w.e.f. 01.01.2017. As such, in my view, the claimants/appellants should be entitled for a compensation amount of Rs.8 Lacs alongwith interest @ 9% per annum to be calculated from the date of the present decision till the date of payment."*

6. Following the ratio of the above decision, it is clear that the calculation of both sides regarding the actual admissible compensation for the respondent is incorrect. He is actually entitled to either the previous compensation admissible at the relevant time i.e. ₹4,00,000/- with interest at 9% per annum from the date of accident, or ₹8,00,000/-, which is available as per the Amendment brought w.e.f. 01.01.2017, and the higher of these two amounts would be the actual compensation payable. After having withdrawn an amount of ₹4,00,000/- in pursuance of the earlier interim order dated 21.07.2014, the respondent would, therefore, be entitled to an additional amount of ₹8,00,000/-, which is inclusive of the interest accrued on his originally admissible compensation, and any short-fall in such totals of the original compensation amount and accrued interest thereupon would also be admissible to him to ensure that the compensation available as per the subsequent Amendment of 2017, is not denied. Admittedly, the appellants had deposited an amount of ₹12,75,560/- in compliance of the judgments of both the Ld. Courts below. They are, therefore, entitled to seek refund of the amount exceeding the composite figure of ₹8,00,000/- from

the Ld. Court below while the composite amount of ₹8,00,000/- only will be the total compensation payable to the respondent inclusive of all accumulated interest till the date of payment before the Ld. Court below i.e. 16.08.2014.

7. The present appeal is, thus, allowed in part with the aforesaid observations. Consequently, cross-objections are also disposed off in the above terms.

18.11.2019 **(SUDIP AHLUWALIA)**
Bhumika **JUDGE**

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