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

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**FAO No.4857 of 2018 (O&M)**
**Date of Decision: 22.05.2019**

Manju Sharma and another

Appellants

Versus

Ashwani and others

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Ishan Cooner, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate
for the respondents.

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**AVNEESH JHINGAN, J (Oral):**

The legal representatives of Amarjeet Sharma (deceased) are in appeal against award dated 06.09.2017 passed by the Motor Accident Claims Tribunal, Chandigarh [for brevity 'the Tribunal'] 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. IFFCO TOKIO General Insurance Company Ltd.) of Car bearing registration No. HR-01F-0692 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The factum of accident is not disputed. A motor vehicular accident took place on 07.10.2016. The accident proved fatal for Amarjeet Sharma, aged 56 years. The accident was result of the 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.

In the claim proceedings, it was proved that the deceased was working as a Senior Accountant with Postal Department and his salary was ₹74,487/- per month. After deduction of income tax payable, salary of the deceased was considered as ₹7,80,691/-; 1/3rd deduction for self-expenses was made, as the deceased was survived by two dependents and multiplier of '9' was applied considering the age of the deceased. The Tribunal awarded a sum of ₹48,09,149/- alongwith interest @ 6% per annum if amount is paid within three months and in case of default interest @ 8% per annum. The amount awarded included ₹25,000/- for funeral expenses and ₹1,00,000/- for loss of consortium.

Three-fold issues involved in the present appeal are :-

- that no future prospects have been awarded;
- the Tribunal erred in awarding conditional interest and
- amounts awarded under the 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.***

Heard learned counsel for the parties, perused the paper book and relevant documents placed on record.

Learned counsel for the appellants contends that the deceased was in the age group of 50-60 years and was a

Government Servant, the grievance is that no future prospects have been awarded and the Tribunal erred in awarding the conditional interest.

Learned counsel for the insurer argues that amounts awarded under the conventional heads be made as per decision of the Supreme Court in ***Pranay Sethi's case*** (supra).

There is no challenge to the loss of dependency i.e. ₹46,84,149/- calculated by the Tribunal. In consonance with the decision of the Supreme Court in ***Pranay Sethi's case (supra)***, 15% future prospects are awarded i.e. ₹46,84,149 x 15% = ₹7,02,622/-.

As the quantum of compensation is being revisited, it would be appropriate that amounts under the conventional heads be awarded as per decision of the Supreme Court in ***Pranay Sethi's case*** (supra). The claimants are 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 ₹1,25,000/- awarded under the conventional heads is reduced by ₹55,000/-.

The award dated 06.09.2017 is modified to the extent that amount of ₹48,09,149/- is enhanced by ₹6,47,622/-.

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.*

Taking into consideration various aspects including the banks' interest rates prevalent at relevant time, claimants are held entitled to the enhanced amount alongwith interest @ 7.5% per annum.

The appeal is partly allowed.

**[AVNEESH JHINGAN]**
**JUDGE**

**May 22, 2019**
*pankaj baweja*

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