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

**FAO No. 565 of 2018 (O&M)**
**DECIDED ON: APRIL 09, 2019**

**PARAMJIT KAUR AND ANOTHER**

**APPELLANTS**

**VERSUS**

**JAGTAR SINGH AND OTHERS**

**RESPONDENTS**

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

Present: Mr. P.S. Brar, Advocate
for the appellants.

Mr. Ram Avtar, Advocate
for respondent No.3-Insurance Company.

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

The award dated 13.09.2016 passed by the Motor Accident Claims Tribunal, Faridkot (for brevity 'the Tribunal') has been assailed by the widow and son of Jaspal Singh (deceased) 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 Oriental Insurance Company Ltd.) of Tata open truck bearing registration No. PB-03-M-9729 (hereinafter referred to as 'offending vehicle') have been arrayed as respondents

No.1 to 3 respectively in the appeal.

The facts are summarized below:-

On 23.01.2016, Jaspal Singh was driving a motorcycle and Nirmal Singh was a pillion rider. On the way, the motorcycle was struck by the offending vehicle, as a result of the impact, Jaspal Singh sustained grievous injuries. He was taken to GGS Medical College and Hospital, Faridkot where he was declared dead. FIR No. 10, dated 23.01.2016 was registered at Police Station Sadar, Kotkapura.

On appreciating the evidence adduced, the Tribunal held that the accident was caused due to the rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

In the claim proceedings, it was claimed that the deceased was working as Mason and was also running the business of Dairy Farming. He was earning ₹20,000/- per month from the work of Mason and ₹15,000/- per month from the sale of milk. The claimants failed to prove the occupation and earning of the deceased. However, Surjit Singh PW-3 deposed before the Tribunal to state that the deceased used to work with him as Mason. The Tribunal assessed the monthly income of the deceased as ₹6600/- per month; 1/3rd deduction for self-expenses was made and multiplier of '13' was applied considering the age of the deceased as 46 years. The Tribunal awarded a sum of ₹8,12,000/-. The amount awarded included ₹1,00,000/- for loss of consortium and ₹25,000/- for funeral expenses. The interest awarded was conditional i.e. @ 6% per annum, if the amount is paid within three months and thereafter, claimants shall be entitled to interest @9% per annum.

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. His grievance is that the Tribunal assessed the monthly income of the deceased as ₹6600/- per month, which is even less than the minimum wages prevalent in the State at the time of accident. He argues that the Tribunal erred in awarding conditional interest.

Learned counsel for the insurer defends the award and resisted further enhancement. He further submits that apart from one oral evidence of Surjit Singh PW-3, there was nothing on record to show that the deceased was working as Mason. The claimants failed to prove the occupation and earning of the deceased. His grievance is that the amounts awarded under the conventional heads are on higher side.

Claimants failed to prove the earning of the deceased. No evidence was produced with regard to the fact that the deceased was doing the business of dairy farming. However, Surjit Singh PW-3 who was an independent witness, deposed before the Tribunal that the deceased was working as Mason with him for the last 20 years. Considering the fact that the said evidence was not rebutted and in order to award just and equitable compensation the deceased is considered to be a semi-skilled labourer. Considering the minimum wages prevalent in the State at the time of accident for a semi-skilled labourer, the income of the deceased is assessed as ₹7700/- per month.

Having due regard to the decisions of the Supreme Court in

***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs.Oriental Insurance Company Ltd. 2018 (2) PLR 480***; 25% future prospects are awarded as the deceased was in the age group of 40-50 at the time of accident and fell in the category of self-employed or a person having established income.

There is no dispute between the parties with regard to 1/3rd deduction made for self-expenses and multiplier '13' applied.

As the quantum of compensation is being revisited, it would be appropriate that amounts under the conventional heads are awarded as per decision of the Supreme Court in ***Pranay Sethi's*** case (supra). The claimants shall be entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

| | **Head** | **Compensation awarded** |
|---|---|---|
| (i) | Monthly income | ₹ 7700/- per month |
| (ii) | Future prospects at 25% | ₹ 1925/- |
| (iii) | Total Income | ₹ 9625/- per month |
| (iv) | Deduction of personal expenses | ₹ 3208/- (i.e. 1/3rd of total income) |
| (v) | Multiplier | 13 (as per age of deceased) |
| (vi) | Loss of income | 6420x12x13= ₹10,01,520/- |
| (vii) | Funeral expenses | ₹15,000/- |
| (viii) | Loss of estate | ₹15,000/- |
| (ix) | Loss of Consortium | ₹40,000/- |
| | Total Compensation awarded | ₹10,71,520/- |

The award dated 13.09.2016 is modified to the extent that amount of ₹8,12,000/- awarded by the Tribunal is enhanced to ₹10,71,520/-.

The Tribunal erred in awarding conditional interest by stating that if the payment is made within three month, interest @ 6% shall be payable and thereafter, interest @9% shall be payable.

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."*

It was held that such a condition that in case of failure of payment within stipulated time, higher rate of interest with retrospective effect, cannot be sustained.

Considering the banks' rate of interest at the time of accident, the claimants shall be entitled to the entire amount (including enhanced amount) alongwith interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is allowed.

**(AVNEESH JHINGAN)**
**JUDGE**

**APRIL 09, 2019**
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***Whether speaking/ reasoned : Yes/No***
***Whether reportable : Yes/No***