IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

452 FAO-2242-2014 (O&M) with
XOBJC-174-CII-2018
Date of Decision: 20.09.2022

Future General India Insurance Company Ltd. ---Appellant

versus

Shyamo and others ---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vishal Aggarwal, Advocate
for the appellant.

Mr. Shvetanshu Goel, Advocate
for respondent No.1-Cross-Objector.

Mr. Upender Prashar, Advocate
for respondents No.5 and 6.

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JAGMOHAN BANSAL, J. (ORAL)

1. By this order, appeal bearing FAO No. 2242 of 2014 and Cross Objections No. 174-CII of 2018, which are arising from the same incident and award dated 12.03.2014 passed by the Motor Accident Claims Tribunal, Kaithal (for short 'Tribunal') whereby the Tribunal has awarded a sum of Rs.12,15,776/- along with interest @ 7 % per annum from the date of filing of the claim petition are hereby adjudicated.

2. The Future General Insurance Company Limited (for the sake of convenience hereinafter called as 'appellant') has filed appeal raising question of quantum of compensation whereas

claimants have filed cross objections for enhancement.

3. The brief facts emerging from record and necessary for the adjudication of present appeal are that on 23.06.2011, while Gulab Singh (deceased) was going on his bicycle, a tractor trolley bearing registration No.HR-07-L-9350 hit the deceased from backside. Resultantly, legs of the deceased got crushed and he passed away. An FIR was registered against the driver of the vehicle. The respondents preferred a claim petition under Section 166 of Motor Vehicles Act, 1988 before the Tribunal which came to be adjudicated vide order dated 12.03.2014. The Tribunal under different headings awarded a sum of Rs.12,15,776/- along with interest @ 7% per annum from the date of institution of the petition till the realization of whole amount of compensation.

4. Learned counsel for appellant/insurer vehemently contended that as per judgements of Hon'ble Supreme Court of India in ***National Insurance Company Limited vs. Birender and ors., 2020(11) SCC 356*** and ***Reliance General Insurance Co. Ltd. vs. Shashi Sharma and ors., 2016(3) SCC (Crl.) 713,*** the amount of financial assistance extended by State of Haryana deserves to be deducted from compensation awarded by learned Tribunal.

Learned counsel vigorously submitted that amount of interest should not be included in the amount of compensation before deducting financial assistance. He further contended that amount of financial assistance at first instance should be deducted from amount of compensation and thereafter interest should be calculated on the balance amount. He does not dispute the calculation of principal amount and he confines his argument to calculation of interest.

5. Per contra, learned counsel for the respondents/claimants conceded that amount of compensation needs to be recalculated in terms of above-cited judgements of Hon'ble Supreme Court. However, the amount of interest should be included in the amount of compensation prior to deduction of financial assistance extended by State of Haryana.

6. The conceded position emerging from the record is that the appellant was an employee of State of Haryana and was drawing salary of Rs.15,763/- per month and in terms of a five-Judge Bench judgment of Hon'ble Supreme Court in **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680** and a three-Judge Bench judgment of Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121,** the respondents are entitled to compensation of Rs.20,64,672/-. The dispute lies in the narrow compass qua calculation of amount of interest. It is undisputed fact that the respondents on account of financial assistance got a sum of Rs. 9,77,306/- from State of Haryana.

7. Both the parties are ad-idem that financial assistance of Rs.9,77,306/- must be deducted from amount of compensation. The respondents-cross objectors are entitled to interest @ 7.5% from the

date of filing of claim petition till the date of actual payment.

8. The respondents filed a claim petition on 06.08.2011 and it came to be adjudicated on 12.03.2014. As per afore-cited judgements, the amount of financial assistance deserves to be deducted from amount of compensation. The amount of compensation was determined on 12.03.2014 and by said date, interest for the period i.e. 06.08.2011 to 12.03.2014 had accrued. The amount of financial assistance, no doubt, should be deducted from principal amount awarded by the Tribunal, however, the amount of interest cannot be calculated after deducting financial assistance from principal amount awarded because claim petition remained pending for almost three years and determination of compensation relates back to date of institution whereas financial assistance was extended by way of monthly payment in the form of salary. The respondents got financial assistance in monthly installments and amount of compensation which relates back to date of institution remained parked with insurer and he got benefit in the form of interest. It is settled principle of law that interest is compensatory in nature and Section 171 of Motor Vehicles Act, 1988 specifically permits Tribunal to grant interest on the compensation awarded. Thus, I am of the considered opinion that compensation which was determined on 12.03.2014 relates back to date of institution i.e. 06.08.2011 and by the said date, no financial assistance was extended to the respondents. The insurer cannot take advantage of

pendency of adjudication of claim petition. The insurer is liable to pay interest on the principal amount even though insurer cannot be called upon to pay interest on interest.

9. Faced with this situation, learned counsel for the insurer expressed his inability to controvert the calculation as proposed by this Court. Accordingly, the amount of interest and principal is re-calculated as below :-

Particulars	Income (in Rs.)
Monthly income	15763
Future prospects (15%)	18127
Deduction on account of personal expenses (1/4th)	13596
Annual income of the deceased	1,63,152
Multiplier (11)	17,94,672
Loss of estate	16500
Funeral expenses	16500
Family consortium (44000 X 4)	1,76,000
Total amount of compensation	20,03,672
Financial Assistance received from State Government	977306
Compensation after deduction of financial assistance	10,26,366
Interest for the period from 06.08.2011 to 12.03.2014 (20,03,672 x 7.5%)	3,88,213
Compensation payable on 12.03.2014(10,26,366 + 3,88,213)	14,14,579

10. The insurer shall pay balance unpaid amount i.e. Rs.14,14,579/- within eight weeks from today and insurer shall be further liable to pay interest @ 7.5% per annum on Rs.10,26,366/- from 13.03.2014 to till date. It is made clear that amount already paid

would be deducted from claim determined hereinabove.

11. The appeal and cross-objections are disposed of in the manner indicated above.

(JAGMOHAN BANSAL)
JUDGE

20.09.2022
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No