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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4861-2022 (O&M)
Date of Decision: 14.11.2022

KOTAK MAHINDRA GENERAL INSURANCE COMPNANY LTD.

..... APPELLANT

VS

REKHA RAGHAV AND ORS.

..... RESPONDENTS

CORAM: HON'BLE MR.JUSTICE ALOK JAIN

Present:- Mr. Punit Jain, Advocate for the appellant.

ALOK JAIN, J. (Oral)

The present appeal challenges the award dated 30.07.2022 passed by learned Motor Accident Claims Tribunal (MACT), Gurugram, awarding a compensation of sum of Rs.26,31,000/- along with interest 7% for the death of deceased-Avdesh in a road accident, which took placed on 09.10.2018.

Counsel for the appellant has argued that the learned MACT, has wrongly taken the income at Rs.13,000/- relying upon DC rates and instead to have applied the Minimum Wages Act, which shows about Rs.10,382/-, and hence, submits that the compensation assessed on the higher side. He further submits that the DC rates have been wrongly applied as the claimant failed to establish his income and hence the Minimum Wages Act should have been applied by treating him as a daily wager.

However, a perusal of the award shows that the deceased was graduate and was having Diploma in Computer Applications. The claimant has also placed on record an offer letter (Ex. P79) offering salary of Rs. 15200/- as a teacher. The income for the purpose of computing the compensation has to be realistic if not definite. In the present case, the claimants have claimed that the deceased was earning Rs. 15,200/- as a salary and another Rs. 10,000/- from imparting tuitions. In the light of the above, where the deceased was a well-educated abled body man, the Tribunal has taken his monthly income as Rs. 13,000/- as per DC rates. This Court refrains itself from commenting upon whether the said analogy applied by the Tribunal is right or wrong but is of the opinion that the argument raised by the insurance company does not hold good for the reason that the notification under the Minimum Wages Act would come into play only if there is no iota of any evidence with regard to the income of deceased. Since in the present case, there is some evidence with regard to the income of the deceased, who was a qualified person, the Tribunal has rightly applied DC rates for computation of compensation. However, it is made clear that the finding in the present appeal shall not preclude the claimants to seek enhancement of compensation if permissible in accordance with law. Accordingly, the said argument of the appellant is negated.

The second argument raised by the counsel for the appellant is with regard to the penal clause in the relief, according to which, in case, the compensation amount is not deposited within 45 days from the date of award, the claimants have been held entitled to recover the same along with interest @ 9% per annum from the date of institution. Learned counsel for the appellant has relied upon the judgment of the Hon’ble Supreme Court of India in ***<u>2004 (2) RCR (Civil) 99</u>*** titled as "***<u>National Insurance Co. Ltd. Vs. Keshav Bahadur and Ors</u>***., wherein Para 14 read as under:

> *"14. 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 71 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 of higher rate of interest being enforced, in the manner directed by the Tribunal.*
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> *The insurer cannot withhold the amount indefinitely. In the circumstances, we direct that interest @ 9% per annum on the sum of Rs. 50,000/- which is the liability of the insurer; from the*

date of claim till 6.3.1998, be paid within a period of three months from today, if not already aid or deposited before the Tribunal/High Court. The appeal is allowed to the extent Indicated, without any order as to costs".

The Hon'ble Supreme Court of India has held that the rate of interest as awarded shall alone be applicable till payment, without the stipulation of higher rate of interest, and hence, prays that the interest @ 7% as imposed in the relief should be imposed.

Accordingly, in light of the above the present appeal is dismissed qua the quantum as detailed above. However, the appeal is partly allowed only to the extent that the award stands modified and the interest awarded by the learned MACT, Gurugram be read as at the rate of 7% per annum from the date of the award till final realization.

The amount of Rs.25000/- deposited by filing the appeal be also transferred to the claimants.

Ordered accordingly.

(ALOK JAIN)
JUDGE

14.11.2022
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No