

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5255-2023 (O&M)
DECIDED ON: October 30, 2023

Oriental Insurance Company Limited

...Appellant

Versus

Harpal Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

SANJAY VASHISTH, J.

1. Present appeal has been filed by the Oriental Insurance Company Limited (respondent No. 3 in the claim petition) against the award dated 11.07.2023, passed by the learned Motor Accident Claims Tribunal, Rupnagar (here-in-after referred to as 'the Tribunal') in MACP-178-2019, whereby, in a death case, the Tribunal directed the respondents therein to pay compensation amount of Rs.13,35,000/- to the claimants along with interest @ 7.5% per annum from the date of filing of the claim petition till the actual realisation. The Tribunal further held that in case, awarded amount is not paid within the period of 2 months from the date of the award, i.e. 11.07.2023, claimants shall be entitled to the interest @ 9% per annum from the date of award, till realisation.

2. Counsel for the appellant submits that it is a case of contributory negligence because car bearing registration No. PB-12K-8880 which was being driven by Avtar Singh (deceased in the present case) got struck against the already parked container from the backside, resulting into the death of Avtar Singh and Rishipal while others received injuries.

3. Accident in question took place on 03.02.2019 at 05.30 am and admittedly, there is no evidence that the container bearing registration No. HP-12C-6570 used any blinkers, dippers, indicators or even reflectors while parking it in the middle of the road. Therefore, the Tribunal has also noticed that as per FIR No. 12, dated 03.02.2019, under Sections 283, 304-A, 337, 338 and 427 IPC, registered at Police Station Machhiwara (Ex.C-3), driver of the container is *prima facie* held to be responsible in parking his vehicle rashly & negligently, and involvement of no other person is found there.

4. Taking note of the fact that truck/container was parked without its parking lights on and also, without any indicators on, either in the front or backside of the vehicle and the fact that the accident took place at 05.30 am in the morning on 03.02.2019, which undoubtedly, is the time of complete darkness all around, the Tribunal has rightly held it to be an act of rash and negligent driving, by the driver of the truck/container.

5. Therefore, this Court does not find any reason to interfere with the findings recorded by the Tribunal.

Accordingly, argument in regard to the contributory negligence of the deceased, is hereby discarded.

6. Another contention made by learned counsel for the appellant is that the Tribunal has erred in directing the appellant Insurance Company to pay interest @ 9% per annum from the date of award till its realisation, after a period of two months of the passing of the award, which is unsustainable.

While placing reliance on the judgment of Hon'ble Apex Court in the case of National Insurance Company Limited v. Keshav Bahadur and others, 2004 (2) R.C.R. (Civil) 99 : Law Finder Doc Id #66830, learned counsel further submits that once the Tribunal has reached to the conclusion that the claimants are entitled for the interest @ 7.5% per annum, imposition of interest @ 9%, in case compensation is not paid within 2 months from the date of award, would amount to imposition of penalty, whereas there is a provision of statutory appeal also.

7. Having heard learned counsel for the appellant and going through the cited judgment, I am of the view that probably, Hon'ble Apex Court was not assisted qua another provision of the Motor Vehicles Act, 1988 (for brevity, 'the 1988 Act'), i.e. Section 168(3), which says as under:-

“168. Award of the Claims Tribunal.

(1) & (2) XXX XXX XXX

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

8. From a bare reading of the said provision of Section 168(3) of the 1988 Act, it is amply clear that the object of the Legislation while framing the law is to secure the interest of the victim(s), immediately after passing of the award at its first instance by the Tribunal. Undoubtedly, there is a reason behind this object, and that is why the 1988 Act also contains the provisions which are beneficial to safeguard the interests of the victim(s). Therefore, it is clear that the provision of Section 168(3) of the 1988 Act, has been made so as to get the money secured at the earliest, by getting it deposited under the direction of the Tribunal.

9. While considering the provision of Section 168(3) of the 1988 Act, there is another angle to think that once the money is deposited by the concerned insurance company or the defaulter, it would not be burdened with higher rate of interest, as apprehended by the insurance company in the present case.

 In a way, deposit of the awarded amount of compensation would be a mandatory step for the person/agency who feels aggrieved with the award, to firstly secure the interest of the victim(s) and then to

approach the higher court by way of appeal/revision, for which the limitation has been provided as 90 days. Thus, reading of Section 168(3) and Section 173 of the 1988 Act together, would make it clear that purposely a mandate has been fixed to deposit the amount of compensation within 30 days, and within 90 days aggrieved person/agency/party can approach the higher court for the purpose of appeal.

10. For considering the object of enacting Section 168(3) of the 1988 Act, this Court would also like to refer to the provisions of another beneficial legislation, i.e. Section 4A of the Employee's Compensation Act, 1923 (for brevity, 'the 1923 Act') [prior to amendment of 18.1.2010 it was known as "the Workmen's Compensation Act"]. Section 4A of the 1923 Act manifests that compensation under Section 4 shall be paid as soon as it falls due. In case employer does not want to accept the liability of compensation to the extent claimed, such payment is required to be deposited with the Commissioner defined under the Act. Section 4A of the 1923 Act says as under:-

"4A. Compensation to be paid when due and penalty for default. -

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee,

as the case may be, without prejudice to the right of the employee to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall -

- (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher, rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and*
- (b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:*

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation. - For the purposes of this sub-section, “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the employee or his dependant, as the case may be.”

Rather, under the 1923 Act, provision of depositing of the compensation amount is condition precedent to the remedy of filing of appeal by the employer, and limitation for filing such appeal is 60 days.

11. Taking note of the facts and circumstances of the present case and the submissions addressed by learned counsel for the appellant

Insurance Company, this Court is of the view that there is no much force in the submissions.

Judgment cited by learned counsel for the appellant Insurance Company, would not be applicable to the facts and circumstances of the present case, because there is nothing discussed regarding Section 168(3) of the 1988 Act and its obvious object.

12. Thus, view point of this Court is that once awarded amount of compensation is deposited by the aggrieved person/agency/party, within 30 days from the date of announcement of the award, i.e. in consonance with Section 168(3) of the 1988 Act, alongwith interest @ 7.5% per annum, there would not be any situation for the insurance company or any such aggrieved person to pay interest @ 9% with retrospectivity.

Undoubtedly, such provision of law is to secure the interest of all the parties to the *lis*, i.e. before the Tribunal. Once the amount is deposited, in compliance to the mandatory provision of law, there is no question of imposition of enhanced rate of interest in default of making payment of the amount.

13. This Court does not find any force in the submissions addressed by learned counsel for the appellant Insurance Company, to interfere with the findings given by the Tribunal while passing the

impugned award. Accordingly, while discarding the submissions made, well reasoned findings recorded by the Tribunal are upheld.

Present appeal stands dismissed.

(SANJAY VASHISTH)
JUDGE

October 30, 2023
Lavisha/Pkapoor

Whether speaking/reasoned

Whether reportable

✓~~Yes~~/~~No~~
✓~~Yes~~/~~No~~