(2018) 06 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : CMPMO No. 167 of 2018

National Insurance Company Limited — APPELLANT

Vs

Neem Kumari and others — RESPONDENT

Date of Decision : 01-06-2018

Acts Referred:

Workmen's Compensation Act, 1923 — Section 4
Income Tax Act, 1961 — Section 194 (A)(IX), 194A

Citation : (2018) 06 SHI CK 0001

Hon'ble Judges : VIVEK SINGH THAKUR

Bench : Single Bench

Advocate : Devyani Sharma, Vinay Kuthiala, Diwan Singh Negi

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J.

1. Present petition has been filed against direction passed by the Commissioner under Employees' Compensation Act, Paonta Sahib, District Sirmaur,

H.P. (hereinafter referred to as 'the Commissioner') in Execution Petition No. 57/2016 (23/10 of 2016), titled Neem Kumari and another versus

National Insurance Company Ltd., filed by claimants/respondents No. 1

and 2 for payment of balance amount of Rs. 64,442/Â alongwith interest, which were not paid by the petitioner/Insurance Company to the

claimants/respondents but were deducted as TDS for income tax on interest payable to the claimants/respondents on compensation awarded in their

favour under Employees' Compensation Act and deposited with respondent No. 3 through Income Tax Officer, Nahan.

2. Facts of the case, in brief, are that the respondents/claimants filed a claim petition being Claim Petition No. 10ÂECA/2 of 2011/09 under Section 4

of the Workmen Compensation Act (now Employees' Compensation Act) for compensation on account of death of Shri Dhan Bahadur, who, while

working as a driver, died in an accident, dated 7th January, 2009. The Commissioner allowed the petition on 13th January, 2015, by awarding a sum of

Rs. 4,36,940/Â alongwith 12% interest with effect from 7th February, 2009 till its deposit. The petitionerÂinsurance company, being the insurer, was

directed to indemnify the insured.

3. In pursuance to the award, the petitionerÂinsurance company deposited a sum of Rs. 6,94,708/Â vide cheque No. 516819, dated 3rd March, 2015

in the Court of the Commissioner after deducting an amount of Rs. 64,442/Â towards TDS (20%) on the interest component payable on the

compensation amount, which was deducted by the petitionerÂinsurance company in compliance of Section194 (A)(IX) of the Income Tax Act, 1961.

The tax was deposited with respondent No. 3Â?Income Tax Officer (TDS), Nahan.

4. In execution petition preferred by the claimants/respondents for payment of balance amount of compensation, the Commissioner, vide impugned

order, has directed to attach movable property of respondentÂ?petitioner herein for realization of Rs. 1,02,774/Â? (Rs. 64,442/Â? + interest).

5. Section 194ÂA of Income Tax Act, 1961, clearly provides that any person, not being an individual or a Hindu undivided family, responsible for

paying to a â??residentâ?? any income by way of interest, other than income by way of interest on securities, shall deduct income tax on such

income at the time of payment thereof in cash or by issue of cheque or by any other mode. Compensation awarded under Motor Vehicles Act or

Employees' Compensation Act in lieu of death of a person or bodily injury suffered in a vehicular accident, is a damage and not an income and cannot

be treated as taxable income.

6. It is well settled that interest awarded by the Motor Accident Claims Tribunal on a compensation is also a part of compensation upon which income

tax is not chargeable as also held by the Division Bench of this Court in Court on its own motion vs. The H.P. State Cooperative Bank Ltd. and

others, reported in 2014 (Suppl.) Him.L.R. (DB) 2575 and reiterated in CWP No. 460 of 2014, titled Shiv Ram Sharma vs. Union of India and others,

and other connected matters vide decision dated 3rd June, 2015. The same principle will be applicable in the present case also.

7. Therefore, in view of abovesaid decision, deduction of income tax by petitioner/ Insurance Company on the interest accrued/awarded on the

compensation deposited by the petitioner/Insurance Company is illegal and is contrary to the law of land.

8. In view of above discussion, this petition is disposed of directing respondent No. 6ÂIncome Tax Officer, Nahan to refund the TDS to the

petitioner/Insurance Company within ten weeks from date of receiving information thereof, which shall be supplied by petitioner/Insurance Company

within two weeks from today, as per Rules applicable and petitioner company is also directed to make payment of balance amount of compensation,

i.e. Rs. 1,02,774/Â, within four weeks from the date of receipt of refund from Income Tax Officer, failing which petitioner company shall also be

liable to pay interest @ 9% per annum on the said amount with effect from 31 st March, 2015, till payment/deposit.

9. Petition is disposed of in aforesaid terms. Interim order, dated 14th May, 2018, passed in CMP No. 4322 of 2018 also stands vacated in above

terms. The Commissioner is directed to proceed further accordingly. No order as to costs.

