(2017) 03 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 24164-CII of 2015 in F.A.O. No. 1148 of 1999

Sunder Ram — APPELLANT

Vs

Balwinder Singh — RESPONDENT

Date of Decision : 21-03-2017

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 171

Citation : (2017) 3 RCRCivil 327

Hon'ble Judges : Mrs. Daya Chaudhary, J.

Bench : Single Bench

Advocate : Sagar Aggarwal, Advocate, for the Applicant-Appellant; R.C. Gupta, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—Applicant-claimant filed a claim petition before Motor Accident Claims Tribunal, Karnal (hereinafter referred to as ''The Tribunal'') under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as ''The Act'') which was allowed and claimant was awarded compensation amounting to Rs. 1,50,000/- on account of injuries received by him in the motor vehicle accident. Respondents No. 1 and 2 were held liable to pay compensation jointly and severally. The amount of compensation was to be deposited in fixed deposit in some nationalized bank in the name of claimant for a period of five years at the first instance and to be renewed thereafter on the same terms and conditions. It was also directed that the interest accrued on the said amount be paid every month to the claimant. However, the loan was not permitted to be raised against the said fixed deposit but liberty was granted to apply for withdrawal of the amount deposited in the fixed deposit in case of emergency to meet out the contingency, if any. The claimant was also held entitled to interest @ 12% per annum from the date of institution of the claim petition till its realization.

2. FAO No. 1148 of 1999 was filed before this Court for enhancement of the amount of compensation, which was allowed vide judgment dated 7.10.2015.

The total amount of compensation was enhanced by Rs. 37895/-. Thereafter, the present application i.e. CM No. 24164-CII of 2015 has been filed for modification of judgment dated 7.10.2015 passed in FAO No. 1148 of 1999 on the ground that inadvertently the interest on enhanced amount has not been paid.

3. Learned counsel for the applicant-appellant submits that the applicant is also entitled for interest on the enhanced amount but inadvertently it was not granted.

4. Notice in the application was issued to counsel opposite.

5. Learned counsel for respondent-insurance company submits that interest awarded @ 12% per annum by the Tribunal is already on the higher side as it was awarded from date of filing of claim petition till its realization, whereas, as per various judgments of this Court as well as of Hon''ble the Apex Court, the interest should have been granted at the prevalent rate of interest to be paid by the nationalized bank in routine.

6. Since no appeal has been filed by respondent-Insurance company and it cannot be said at this stage that interest awarded was on higher side. As per Section 171 of the Act, in case the claim for compensation is allowed by the Claims Tribunal, the Tribunal may direct that in addition to amount of compensation simple interest shall also be paid at such rate from such date not earlier than the date of making claim petition. In judgment passed by Hon''ble the Apex Court in case of Dharampal and others v. U.P. State Road Transport Corporation, 2008(3) RCR (Civil) 808, the issue of interest was dealt with wherein it was held that even though the expression "may" is used but a duty has been laid on the Tribunal to consider the question of interest separately with regard to the facts and circumstances of the case. The relevant portion of said judgment in para Nos. 8 and 9 is reproduced as under:-

"8. As per section 171 of the Motor Vehicle Act, 1988 (hereinafter referred as ''Act'') where the claim for compensation made under the act is allowed by the Claims Tribunal, the tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate from such date not earlier than the date of making claim.

9. In National Insurance Co. Ltd. v. Keshav Bahadur, reported in (2004) 2 SCC 370 this court has held that the provisions require payment of interest in addition to compensation already determined. Even though the expression "may" is used, a duty is laid on the Tribunal to consider the question of interest separately with due regard to the facts and circumstances of the case. It was clearly held in the said decision that the provision of payment of interest is discretionary and is not and cannot be bound by rules."

7. No doubt, the interest on the amount of compensation awarded by Tribunal has been granted but while allowing the appeal filed against the award of the Tribunal there was an enhancement in the amount awarded by the Tribunal but interest thereon has not been paid. Although as per various judgments and

provisions of Section 171 of the Act, the rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking into consideration all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, duration of pendency of the case, injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc. In the present case, while enhancing the amount of compensation by this Court, the interest has not been paid but no where it has been mentioned that the applicant-appellant is not entitled to grant of interest on the enhanced amount.

8. Accordingly, the application filed by applicant-appellant is allowed and respondent-insurance company is directed to grant interest @ 7? % on the enhanced amount from the date it is awarded till it is paid.

