251 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. **CR-527-2019 (O&M)**
Reserved on 19.7.2022
Date of Pronouncement: August 06, 2022

New India Assurance Company Limited .....Petitioner
Vs.
Ravinder Kumar @ Vickey and others ...Respondents

II. **CR-4687-2019 (O&M)**

New India Assurance Company Limited .....Petitioner
Vs.
Rajvinder Kaur and others ...Respondents

III. **CR-3442-2019 (O&M)**

New India Assurance Company Limited .....Petitioner
Vs.
Annpurna and others ....Respondents

IV. **CR-4389-2019 (O&M)**

National Insurance Company Limited .....Petitioner
Vs.
Babli Devi and others
...Respondents

V. **CR-6862-2019 (O&M)**

The New India Assurance Company Limited .....Petitioner

Vs.

Paramjit Kaur Sekhon and others ...Respondents

VI. **CR-7547-2019 (O&M)**

National Insurance Company Limited .....Petitioner

Vs.

Usha Sud and others ...Respondents

VII. **CR-634-2021 (O&M)**

The New India Assurance Company Limited .....Petitioner

Vs.

Pooja Devi and others ...Respondents

VIII. **CR-1382-2021 (O&M)**

New India Assurance Company Limited .....Petitioner

Vs.

Sandeep Kumar (Deceased) through LRs and Another

...Respondents

IX. **CR-1686-2021 (O&M)**

The Oriental Insurance Company Limited .....Petitioner

Vs.

Anju Yadav and others

...Respondents

X. **CR-814-2021 (O&M)**

New India Assurance Company Limited .....Petitioner

Vs.

Gurudutt Sharma and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.C. Kapoor, Advocate for the petitioner
(in CR-527, 3442, 4687 and 7547-2019 and
CR-634, 814 & 1382-2021).

Mr. Sandeep Suri, Advocate for the petitioner
(in CR-4389-2019)

Mr. Rajesh K. Sharma, Advocate for the petitioner
(in CR-6862-2019)

Mr. Varun Sharma, Advocate for
Mr. Satpal Dhamija, Advocate for the petitioner
(in CR-1686-2021)

Mr. Ashit Malik, Advocate for respondents No.3 and 4
(in CR-4687-2019)

Mr. Lakhvir Kumar, Advocate for respondent No.6
(in CR-4687-2019)

Mr. Vinod Bhardwaj, Advocate for respondents No.1 & 2
(in CR-814-2021)

Mr. Yogesh Putney, Sr. Standing Counsel
for respondent No.4-Income Tax Department
(in CR-527-2019)

Mr. Prashant Bansal, Advocate
for respondent Nos.1 to 4 and 6 to 27.

ARVIND SINGH SANGWAN, J.

The common question involved in all the above-mentioned revision petitions arising out of the different orders passed by the Motor Accidents Claims Tribunal, is **"Can the directions be issued to Judgment Debtor-Insurance Company to deduct TDS at source on the amount of interest paid on the compensation under the Income Tax Act, 1961 read with Motor Vehicles Act, 1988."**

It would be relevant to note the facts of all the revision

petitions :-

CR-527-2019

As per the MACT award dated 11.8.2015, the claimant met with an accident on 16.11.2007 and was granted an amount of Rs.26,74,112/-, along with interest @ 7.5% per annum from the date of filing of the petition till its realization.

Challenge in this revision petition filed by the New India Assurance Company is to an order dated 26.9.2018, passed by the Additional District Judge, Chandigarh, whereby the Insurance Company was directed to deposit the deducted amount of TDS of Rs.1,42,534/- in compliance of the order with further liberty to withdraw the same from the Income Tax Department, as per the rules.

CR-4687-2019

As per the MACT award dated 22.11.2012, the claimant met with an accident and was granted an amount of Rs.,13,57,200/- along with interest @ 6% per annum from the date of filing of the petition till its realization. However, the said amount was reduced to Rs.12,81,152/- along with interest @ 9% per annum.

Challenge in this revision petition filed by the New India Assurance Company is to an order dated 23.4.2019 passed by the MACT, Kurukshetra, whereby the Insurance Company was directed to deposit the deducted amount of TDS of Rs.44,903/-.

CR-3442-2019

As per the MACT award dated 5.11.2012, the claimants were awarded an amount of Rs.7,30,.000/- along with interest @ 7% per annum. However, the said amount was enhanced to Rs.15,21,000/- along with interest @ 7.5% per annum.

Challenge in this revision petition filed by the New India Assurance Company is to an order dated 19.3.2019, passed by the MACT, Chandigarh, whereby the Insurance Company was directed to deposit the deducted amount of TDS of Rs.29,820/- and Rs. 85,266/- along with interest @ 7.5% per annum from the date of order dated 28.1.2016 till it realisation.

CR-4389-2019

As per the MACT award dated 3.11.2015, the claimants were awarded an amount of Rs.36,05,648/-. along with interest. However, appeal filed by the Insurance Company was dismissed by this Court.

Challenge in this revision petition filed by the National Insurance Company is to an order dated 16.7.2018, passed by the MACT, Chandigarh whereby the Insurance Company was ordered to release the amount of Rs.98,309/- to the claimant deducted under the head of TDS.

CR-6862-2019

As per the MACT award dated 17.2.2007, the claimants were granted an amount of Rs.17,25,000/-, being 50% of the assessed amount of Rs.34,50,00/- on account of findings having been returned that it was a case of contributory negligence. However, on appeal, this Court has enhanced the amount of compensation to Rs.52,15,000/-, along with interest @ 7.5% from the date of filing of the claim till its realisation, after setting aside the findings of contributory negligence vide order dated 17.5.2018.

Challenge in this revision petition filed by the New India Assurance Company is to an order dated 26.7.2019, passed by the MACT, Moga, whereby application filed for depositing the amount of award after deducting TDS from interest accrued has been dismissed.

CR-7547-2019

As per the MACT award dated 1.5.2017, the claimants were awarded compensation of Rs.7,27,900/-, along with interest @ 7.5% per annum from the date of filing of the petition till its realization.

Challenge in this revision petition filed by the New India Assurance Company is to an order dated 19.1.2019, passed by the MACT/Executing Court, Yamuna Nagar at Jagadhri, whereby the Insurance Company was directed to deposit the deducted amount of TDS of Rs.24,978/- along with interest @7.5% to the claimants.

CR-634-2021

As per the MACT award dated 30.1.2018, the claimants were awarded compensation of Rs.42,91,383/- along with interest @ 9% per annum.

Challenge in these revision petitions filed by the New India Assurance Company is to orders dated 21.10.2020 and 8.11.2019 passed by the MACT/Executing Court, Narnaul, whereby the Insurance Company was directed to deposit the deducted amount of TDS of Rs.1,80,309/-.

CR-1382-2021

As per the MACT award dated 24.1.2018, the claimants were awarded compensation of Rs.4,40,000/- along with interest @ 7% per annum. However, on appeal, this Court enhanced the compensation amount to Rs.6,05,354/- along with interest @ 7% per annum.

Challenge in this revision petition filed by the New India Assurance Company is to an orders dated 26.2.2021 passed by the MACT/Executing Court, Kaithal, whereby the Insurance Company was directed to deposit the deducted amount of TDS of Rs.2,10,713/- within one month from the date of order.

CR-1686-2021

As per the MACT award dated 12.2.2018, the claimants were awarded compensation of Rs.30,68,800/- along with interest @ 9% per annum from the date of filing of the petition till its realisation.

Challenge in this revision petition filed by the Oriental Insurance Company Limited is to an orders dated 27.5.2021 and 20.7.2021 passed by the MACT/Executing Court, Narnaul, whereby the Insurance Company was directed to deposit the balance amount as per the calculation filed by the claimants.

CR-814-2021

As per the MACT award dated 10.8.2018, the claimants were awarded compensation of Rs.3,00,000/- along with interest @ 7% per annum. However, on appeal, this Court enhanced the compensation amount to Rs.6,30,000/-.

Challenge in this revision petition filed by the New India Assurance Company is to an orders dated 4.12.2020 passed by the MACT/Executing Court, Kaithal, whereby the Insurance Company was directed to deposit the deducted amount of TDS of Rs.16,160/- within fifteen days from the date of order.

On 24.1.2019, the following order was passed :-

> "Mr. Kapoor has brought to the notice of this Court two judgments passed by a coordinate Bench of this Court New India Assurance Company Ltd. v. Rajbala and others (CR No.5223 of 2016, decided on March 23, 2018) and in The New India Assurance Co. Ltd. v. Savitri Devi and others, passed in CR no.6784 of 2016 along with three other petitions, on April 04, 2018.

Vide the order dated March 23, 2018, the order of the Commissioner, Employee's Compensation Act, 1923, Hisar Circle, was set aside and the claimants before that forum were given liberty to file their income tax returns and seek a refund of the tax deducted at source by the insurance company while paying compensation to them.

The second judgment, dated 04.04.2018, passed in 4 petitions arising out of claims made before the Motor Accidents Claims Tribunals, however upheld the order passed by the Tribunal directing that compensation awarded by it (including the interest accruing upon that compensation), shall not be subject to TDS.

Upon query to Mr. Kapoor, he submits that the Department of Income Tax as also the petitioners' company filed special leave petitions against the aforesaid orders of this Court, dated April 04, 2018, with both the SLPs having been dismissed, but with the question of law left open as per the order passed in SLP (Civil) Diary No (s) 29873/2018, i.e. the petition instituted by the Department of Income Tax.

Having brought that to the notice of this Court, he submits that even so, the impugned order passed by the Tribunal, directing the petitioner to deposit with the Tribunal the tax deducted at source by the company on the compensation (plus interest thereupon) awarded to the claimant, i.e. respondent no.1 herein, is not a sustainable order, such tax already having been deducted from the total amount and paid to the Department of the Income Tax, and therefore, it is for the respondent-claimants to seek a refund thereof upon filing their income tax returns; and it is not for the petitioner

company to seek such refund from the department, in the face of the statutory provisions contained in the Income Tax Act, 1961, to the following effect:-

Section 194A(1) of Income Tax Act 1961:-

> "Any person, not being an individual or a Hindu Undivided Family, who is responsible for paying to a resident any income by way of interest other than income by way of "Interest on securities", shall at the time of credit of such income to the account of payee or at the time of the payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.
>
> Section 194A (3) (ix) : - "The provisions of Sub Section (1) shall not apply- xxx xxx
>
> (ix) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income, or, as the case may, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees."

He also brings to the notice of this Court clause (b) of Section 145A of the said Act, by which interest received on either compensation or enhanced compensation, would be deemed to be so received as part of the income of the year in which it is actually received.

Since the issue is with regard to refund of the amount already paid as TDS to the Department of Income Tax, it is considered appropriate that at this stage the Department of Income Tax, through the Commissioner, TDS Circle Mumbai, (with whom the amount is stated to have been deposited through the HDFC Bank Limited, Mohali), is impleaded as respondent No.4 in the present petition.

Ordered accordingly."

Thereafter, again, on 27.2.2019, the following order was passed :-

"Pursuant to notice issued on the last date of hearing to the newly added respondent no. 4, i.e. the Department of Income Tax through its Commissioner, TDS Circle, Mumbai, Mr. Yogesh Putney, Advocate, puts in appearance and has supplied a copy of the judgment of a co-ordinate Bench of this Court, in New India Assurance Company Ltd. vs. Rajbala and others (CR No. 5223 of 2016), decided on 23.03.2018, wherein it was held as follows:-

> "Secondly, in a case pertaining to interest on the compensation awarded by the Motor Accident Claims Tribunal, no tax is payable on the interest up to Rs. 50,000/- and beyond Rs. 50,000/- the tax is to be deducted at source on the aggregate of the amount of such income paid during the financial year."

However, in another set of cases, the lead case being titled New India Assurance Co. Ltd. Vs. Savitri

Devi and another (CR No. 6784 of 2016), decided on 04.04.2018, it has been held as follows:-

> "Considering the object of the Motor Vehicles Act, 1988, regarding grant of compensation to the victim, it will not only be unjust but cruel to ask the hapless victim to first pay the interest received along with compensation on account of delayed payment, for which he is not responsible, and then to file the income tax return and claim the refund.
>
> As a result of the foregoing discussion, it is held that the interest paid along with the compensation as a result of the order of the Tribunal or of the superior Court is not liable for TDS.
>
> Consequently, the impugned orders passed by the Tribunal, directing that the compensation awarded by the Tribunal or interest accruing thereon cannot be subjected to TDS, is upheld."

Mr. Putney however submits that the matter having also come up before the Bombay High Court, that Court had referred the issue to the Central Board of Direct Taxes, with the CBDT, vide a communication dated 27.03.2017, having opined that tax on the interest awarded on the compensation payable to a claimant, would be deductible at source.

Other than that, he points to the fact that where the interest on the compensation amount is above Rs. 50,000/-, tax would still be deductible at source as per the statutory

provision contained in Section 194-A (3) (ixa) of the Income Tax Act, 1961.

In view of the above, let notice of motion be also issued now to respondent no. 1, i.e. the claimant before the Motor Accidents Claims Tribunal, returnable on 06.9.2019.

In the meanwhile, operation of the impugned order to the extent that it directs the petitioner company to deposit the tax deducted at source (to the tune of Rs.1,42,534/-), shall remain stayed, till the next date of hearing."

Counsel for the parties have addressed the arguments.

Mr. Yogesh Putney, Senior Standing Counsel for the Income Tax Department has argued that under Section 194-A Sub-Section IX, it is provided as under :-

Interest other than "Interest on securities".

"194-A (1) Any person, not being an individual or a Hindu undivided family who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities shall at the time of credit of such income to the account of the payer or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rates in force:

Provided that an individual or a Hindu undivided family, whose total sales gross receipts or turnover from the business or profession

carried on by him exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such interest is credited or paid shall be liable to deduct income tax under this section.

Explanation –- For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

xxxx xxxx xxxx

xxx xxxx xxx

(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(ixa) to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or as the case may be the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees."

It is also argued that Section 56 regarding income from other sources reads as under :-

> **<u>Income from other sources</u>**
>
> 56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income tax under the head "Income from other sources", if it is not chargeable to income tax under any of the heads specified in section 14 items A to E.
>
> (2) In particular and without prejudice to the generality of the provisions of sub-Section (1), the following incomes shall be chargeable to income tax under the head "Income from other sources:
>
> xxx xxx xxx xxx
>
> (viii) income by way of interest received on compensation referred to in [sub-Section(1) of Section 145B]"

Learned counsel has then referred to the definition of "income" under Section 2(24) of the Income Tax Act to submit that under sub-Section 28-A, "interest" mean as under :-

> "(28A) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized."

It is then argued on behalf of the learned counsel for the Income Tax Department that interest which has accrued on the

compensation awarded in terms of an award by the Motor Accidents Claims Tribunal is taxable.

Counsel has referred to a judgment dated 20.3.2020 passed by the **Madhya Pradesh High Court** in M.P. No.6337, **Oriental Insurance Company Limited Vs. Kala Bai and others**, wherein while dealing with the similar subject and with reference to the two orders passed by this Court, which are reflected in the aforesaid order passed by the co-ordinate Bench has held that though there are divergent views on the points whether the Insurance Company can deduct the TDS if the amount of interest exceeds Rs.50,000/- or not yet has held that the tax is payable on the interest accrued on the amount of compensation under the Motor Vehicles Act with a rider that the interest should not be more than Rs.50,000/- per claimant per financial year.

It has also been held that, at the most, the Insurance Company can file the details of calculation of amount amount of interest payable to each claimant and explain to the Motor Accidents Claims Tribunal that the same is exceeding Rs.50,000/- per claimant and the deducted TDS is justified. It has also been held that in a case where the details are filed then the responsibility of the Insurance Company to obtain declaration Form-15G of Rule 29C of the Income Tax Rules from the claimant at the time of payment of

compensation in order to get relieved of obligation of payment of TDS.

The counsel has, thus, argued that it is the liability of the Insurance Company either to deduct the TDS over and above the payable amount of interest exceeding Rs.50,000/- per claimant or in the alternative obtained a declaration in Form-15G of Rule 29C of the Income Tax Rules from the claimant at the time of payment of compensation in order to get relieved of the responsibility or obligation of payment of TDS to Income Tax Department.

It is also submitted that vide amendment with effect from 1.4.2010, Section 56(2) of the Act was incorporated.

Counsel for the claimants have relied upon the order dated 4.4.2018 passed in Civil Revision No.678-2016, which is referred to in the previous order, as noticed above.

Learned counsel for the appellant-Insurance Company has referred to an order dated 27.11.2019 passed in **CWP-8951 of 2019,** titled as **Baldai Vs. The Chief Commissioner, Income Tax Department and others,** wherein a Division Bench of this Court has made the following observations :-

> "1. This petition has been filed under Articles 226/227 directing the respondents to re-pay/refund of TDS amount of Rs.1,27,633/- which has been illegally deducted vide Form No.16A dated 18.02.2016 (Annexure P-3) from the compensation amount awarded

by the Motor Accident Claims Tribunal, Yamuna Nagar vide Award dated 05.12.2000 (Annexure P-1) to the tune of Rs.2,57,000/- which was later on enhanced by this Court to the tune of Rs.12,54,000/- vide judgment dated 29.09.2014 (Annexure P-2).

2. The brief facts are that the husband of the petitioner had died in a road accident on 05.11.1999. Ultimately the claim of the petitioner and her 5 children under the Motor Vehicles Act, 1988 for compensation was allowed. From the interest component of the compensation amount, respondent No.4-Insurance Company deducted 20% as TDS and it is the refund of this amount which is being sought.

3. Counsel for the petitioner has raised multiple arguments. One of them being that actually the amount was to be divided between six dependents and therefore deducting the entire amount as if it belonged only to the present petitioner was illegal. He has also pointed out that the petitioner and her family members are from the lower strata of society and they had no other source of income and on this score also this deduction should not have been made.

4. On the other hand as per the reply filed and as per the stand of the counsel for respondents No.1 to 3 deduction of TDS on interest (apart from securities) is exigible to an initial deduction at source of 20% and if the income of the petitioner and her children does not exceed the taxable income she could have well sought the refund by filing a return but that is also now delayed.

"5. Keeping in view the entire factual matrix, we deem it appropriate to dispose of this petition with a

> **direction to the petitioner to file a return within two months from the date of receipt of certified copy of this order with the competent Assessing Officer along with an application for condonation of delay under Section 119 of the Income Tax Act, 1961 and the competent authority is directed to take a sympathetic view in dealing with the application for condonation of delay and hereafter the Assessing Officer may consider if the petitioner and her five children are entitled for refund as per law."**
>
> 6. Petition stands disposed of.
>
> 7. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of."

It is worth noticing to have a look as the view taken by the different High Courts on the subject matter with the help of law researchers of Court.

The High Court of Madhya Pradesh in **2010 SCC OnLine M.P. 567, <u>United India Insurance Company Limited</u> Vs. <u>Ram Lal and others</u>,** has observed as under :-

> "14. Keeping in view the principles laid down in various cases mentioned herein above which would apply with equal force to the claim cases, **this court is of the view that the interest awarded has to be spread over in number of years from the date of filing of claim petition till the date of payment because the right to receive compensation arises immediately on occurrence of accident and the interest is awarded by the Tribunal or the courts for the delay that occurs due to the delay in determination of compensation**

> **and if interest for the financial year payable to each individual claimant exceeds Rs. 50,000/- then only question of TDS will arise. So far as obligation of petitioner insurance company responsible for the payment is concerned, it is made clear that before releasing the amount of interest claimant shall be required to submit an affidavit to the effect that claimant has furnished a declaration in Form 15-G of rule 29-C of the Income Tax Rules in terms of section 197A (1-A) of the Income Tax Act for each financial year in the office of insurance company so that concerned insurance company is relieved of its obligation of payment of TDS.**
>
> 15. With the aforesaid, appeal stands disposed of."

Similarly, the High Court of Himachal Pradesh in case 2010 SCC OnLine HP 5513, **Oriental Insurance Company Limited Vs. Viyasan Devi and others,** has held as under :-

> **"8. While deducting tax at source it has to be deducted in respect of the income being derived by a person. All the claimants cannot be clubbed together and the income of each claimants will have to be individually assessed because each claimant would be a separate person within the meaning of the Income Tax Act. It is made clear that nothing is being said about minor(s) in this case since that issue does not arise in this case. A bare reading of Section 194 clearly shows that the duty to deduct tax at source in terms of Section 194(A)(ix) will arise only when the aggregate interest income of "a person" exceeds Rs. 50,000/-. If it is Rs. 50,000/- or less, then no tax is to be deducted at source. Merely because the claimants**

> **have joined together to file a claim petition does not mean that the entire interest payable on the compensation is to be taken into consideration. Before making deduction, the Insurance Company must verify what is the interest income of each individual claimant and accordingly deduct tax at source.**
>
> **9. Keeping in view the aforesaid discussion, the petition filed by the Insurance Company is dismissed though on totally different grounds. The Insurance Company shall deposit the amount of tax deducted at source with the Motor Accident Claims Tribunal. It is, however, made clear that on production of this order the insurance company shall be entitled to obtain refund of the tax deposited with the tax authorities,** as per certificate Annexure P-2. Petition is disposed of accordingly. Copy of this judgment be circulated to all the Nationalized Insurance Companies and Motor Accident Claims Tribunals in the State."

A Division Bench of the High Court of Gujarat in 2016 SCC Online Guj. 7399, **New India Assurance Company Limited Vs. Bhoyabhai Hirabhai Bharvag,** has held as under :-

> "12. It would, therefore, be wholly incorrect to read the current provision of sub section (3) of Section 194A to argue that the cases of income credited by way of interest on compensation awarded by the Claims Tribunal is no longer part of sub section (3) for exclusion from purview of sub section (1) of Section 194A. In other words, worded slightly differently. The case of credit of interest on compensation awarded by the Claims Tribunal continues to find place in the exclusion clause contained

in sub section (3) of Section 194A. In fact, it would *prima facie* appear that the ceiling of Rs. 50,000/- per annum for such exclusion is now done away with in case of crediting of interest on compensation awarded by the Claims Tribunal while retaining such limit in cases of payment of interest on such compensation. However, we need not thresh out this last part of the issue since admittedly, in the present case, for none of the years under consideration, the interest income exceeded Rs.50,000/-. In fact, this Court in case of Smt. Hansagauri Prafulchandra Ladhani and ors v. The Oriental Insurance Company Ltd., 2007 ACJ 1897 (Gujarat) (supra) provided for further splitting up of this ceiling of Rs. 50,000/- per claimant basis. **Looked from any angle, the insurance company was not justified in deducting tax at source while depositing the compensation in favour of the claimants. It therefore, cannot avoid liability of depositing such amount with the Claims Tribunal. The Claims Tribunal had committed no error in insisting on the insurance company in making good the shortfall."**

The High Court of Andhra Pradesh in case 2014 SCC OnLine AP 1175, **The National Insurance Company Limited Vs. Yliminti Appanna and another,** has held as under :-

"Be it noted that in case a claimant furnishes a declaration, on Form No. 15 G of R. 29C of the IT Rules in terms of Section 197(1A) of the IT Act or such other declaration on such Form as may be applicable, for each financial year, either to the person concerned or in the office of insurance company, in such a case the person/the insurance

company is relieved of his/its obligation of payment of TDS."

A Division Bench of the Bombay High Court in 2019 SCC OnLine Bom. 1518, **Rupesh Rashmikant Shah Vs. Union of India and others,** has held as under :-

> 58. To summarise, the decision of the Supreme Court in the case of Rama Bai (supra) is not an authority on the question of taxability of interest on compensation or enhanced compensation in motor accident claim cases. In Ghanshyam (HUF) (supra), the Supreme Court held that interest under section 28 of the Land Acquisition Act would invite capital gain tax. This judgment was rendered before amendment in section 145A of the Act. The Gujarat High Court in Movalia Bhikhubhai Balabai (supra), held that the ratio of the Supreme Court in the case of Ghanshyam (HUF) (supra), would continue to apply post amendment in section 145A by virtue of Finance Act, 2009 also.
>
> 59. In order to ascertain the taxability of interest on compensation or enhanced compensation in motor accident claim cases, we, therefore would have to ascertain the true nature of interest. Even the Assessing Officer has proceeded on the basis that the compensation by itself is not taxable. As noted earlier, income of the deceased or the injured for earmarking compensation is ascertained after deducting income tax. We have noticed certain decisions of the Courts holding that such compensation is by way of reimbursement of the loss and cannot be treated as income. We, therefore, proceed on such basis. In the context of the nature of the interest awarded by the Claims Tribunal or the High Court on motor accident claim compensation or enhanced

compensation, we have referred to the decisions of the Supreme Court including in cases of Abati Bezbaruah (supra), Kaushnuma Begum (supra), Patricia G. Mahajan (supra) and Dharampal (supra). These decisions suggest that the interest is awarded for delayed computation of compensation. Right to award interest flows from section 170 of the Motor Vehicles Act, 1988. As is well settled, the authority of the Court to award interest must be traced to a statutory provision or in agreement between the parties. In absence of section 170 of the Motor Vehicles Act, perhaps it would not be lawful for the Tribunal and for that matter, the High Court in Appeal, to award interest on compensation. The Supreme Court in the cases of Abati Bezbaruah (supra), Kaushnuma Begum (supra), Patricia G. Mahajan (supra) and Dharampal (supra), explained the nature of interest awarded in motor accident claims cases. Culmination of discussion in these judgments would be that such interest is compensatory in nature and will thus, form part of the compensation itself. Compensation is computed with reference to the date of accident. All calculations of multiplicand and multiplier are based on such reference point. But computation by the Tribunal takes time. If compensation is revised by the High Court it takes further time. Interest is awarded keeping in mind the rate of inflation. Effort thus is to award just compensation. Awarding interest for delayed computation of compensation is therefore integral part of this exercise.

60. The issue can be looked from a slightly different angle. In the context of interest, there are three crucial dates. The date of the accident is a date in reference to which the entire compensation is calculated. The date of filing of the claim petition is the date from which the

claimant can seek interest on the compensation awarded by the Claims Tribunal. Under section 170 of the Motor Vehicles Act, the interest cannot be awarded for a period prior to filing of the Claim Petition. The date of passing of the award by Claims Tribunal is the date on which the compensation is determined and the right to receive interest pendente lite ceases. The interest for the period between the filing of the claim petition and passing of the award thus, is for the period when the claimant for the first time approached the Claims Tribunal asking the Tribunal to assess and award compensation and the time consumed in disposing of the Claim Petition. We may also recall, the interest can be awarded even though part of the compensation would comprise of future loss of income. This is so because, the multiplier method factors this aspect also. At the same time, as noted, the Courts do not award interest on future expenditure since the amount is being paid to the claimant for an expenditure which may be incurred at a later point of time. This dichotomy, thus, between awarding interest on future income while not awarding interest for future expenditure brings out the true character of the interest being awarded.

61. We, therefore, hold that the interest awarded in the motor accident claim cases from the date of the Claim Petition till the passing of the award or in case of Appeal, till the judgment of the High Court in such Appeal, would not be exigible to tax, not being an income. This position would not change on account of clause (b) of section 145A of the Act as it stood at the relevant time amended by Finance Act, 2009 which provision now finds place in sub-section (1) of section 145B of the Act. Neither clause (b) of section 145A, as it stood at the relevant time, nor clause

(viii) of sub-section (2) of section 56 of the Act make the interest chargeable to tax whether such interest is income of the recipient or not. Section 194A of the Act is only a provision for deduction of tax at source. Any provision for deduction of tax at source in the said section would not govern the taxability of the receipt. The question of deduction of tax at source would arise only if the payment is in the nature of income of the payee.

62. We are not oblivion to erstwhile clause (ix) of sub-section (3) of section 194A or the newly amended clauses (ix) and (ixa) thereof substituting original clause (ix) w.e.f. 1.6.2015 by Finance Act, 2015. Subsection (1) of section 194A provides for deduction of tax at source upon payment of any income by way of interest. Sub-section (3) of section 194A contains exclusion clauses from the purview of sub-section (1). Clause (ix) contained in subsection (3) prior to amendment pertained to income credited or paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal where such amount did not exceed Rs.50,000/-. In substitution of this provision, clause (ix) now provides that the provision of sub-section (1) will not apply to such income credited by way of interest on the compensation awarded by the Motor Accident Claims Tribunal. Clause (ixa) virtually retains the original provision of unamended clause (ix). The learned ASG would, therefore, contend that by virtue of these provisions, requirement of deducting tax at source on interest income would not arise only if the same does not exceed L 50,000/- in a financial year or where such income is merely credited. In other words, at the time of payment of interest, the provision for deduction of tax at source would kick in.

63. So far as the plain meaning of section 194A(1) read with erstwhile clause (ix) and substituted clauses (ix) and (ixa) of subsection (3) is concerned, there can be no doubt or dispute. However, the fundamental question is does section 194A make the interest income chargeable to tax if it otherwise is not. The answer has to be in the negative. The provision for deduction of tax at source is not a charging provision. It only makes deduction of tax at source on payment of same, which, in the hands of payee, is income. If the payee has no liability to pay such income, the liability to deduct tax at source in the hands of payer cannot be fastened. In other words, the provision of deducting tax at source cannot govern the taxability of the amount which is being paid.

64. In the decision of the Gujarat High Court in the case of Hansaguri Prafulchandra (supra), the Court had no occasion to decide the taxability of interest on compensation or enhanced compensation of motor accident cases. This was also the position in the case of decision of this Court in the Gauri Deepak Patel & ors. (supra).

65. We may clarify that these observations and conclusions would apply to interest on compensation or enhanced compensation awarded by the Motor Accident Claims Tribunal or High Court from the date of the Claim Petition till passing of the award or the judgment. Further interest which may be paid for delay in depositing the awarded amount, would not form part of the compensation and, therefore, would fall in the bracket of interest income and would be exigible to tax under the normal provisions.

66. Before closing we would tie a few loose ends:

(i) Learned Counsel for the petitioners had not made any submissions on the vires of the provisions of the Act, virtually giving up the challenge. We have therefore not examined the same.

(ii) Though no serious opposition was raised to the petition on the ground of availability of statutory appeal, we think it is our duty to explain why this petition was entertained. In the present case, only question was of charging interest on compensation/enhanced compensation of motor accident to tax. This was a pure question of law. No facts were to be ascertained. It was otherwise important that such a question is decided by the High Court. We had, therefore, entertained the petition.

(iii) The Assessing Officer has passed the order of assessment. He has made a bonafide assessment. With his approach, there can be no criticism. But when it comes to issuing notice for penalty, it defies logic. The petitioner despite his stand that the interest is not taxable, filed the return, offered the interest to tax and also deposited such tax under protest. What was the purpose of issuing notice for penalty is difficult to understand.

67. In the result, we find that the Assessing Officer had committed an error in levying tax on the interest component of the compensation awarded to the petitioner till the date of the judgment of the High Court. On any interest paid to him post the judgment, tax had to be collected as income from other sources. We, therefore, set aside the impugned order of assessment and place the assessment of the petitioner back to the Assessing Officer for passing fresh order in line with this judgment. Before closing, we record our appreciation for the industry and punctuality with which the learned Senior Counsel Mr. Jamshed Mistri, the Amicus Curiae, had assisted the Court in the present petition.

68. Writ Petition is disposed of accordingly. "

The High Court of Madhya Pradesh in 2020(3) MPLJ, **Ram Khiloni @ Khiloni and others Vs. National Insurance Company Limited,** has held as under :-

> "22. Thus, it is clear that the Insurance Company has been directed to deposit the lump sum compensation amount along with interest and only after the amount with interest is deposited by the Insurance Company, the said amount was to be apportioned amongst the claimants. The Insurance Company was not directed to calculate the compensation amount with interest as per the share determined by the Claims Tribunal. Under these circumstances, this Court is of the considered opinion, that the Insurance Company did not commit any mistake in deducting the TDS on the entire interest. However, each of the claimant would be entitled to claim refund from the Income Tax Department, in case, if he/she is of the view that excessive tax has been deducted. The coordinate bench of this Court in the case of Smt. Draupadibai (Supra) has held as under : 13. It is however, made clear that the aforesaid interpretation of section 194A of the 1961 Act applies only in cases were the compensation amount has been apportioned and the interest payable to each of the claimants is ascertainable but the position may be different when no such apportionment is done by the Tribunal in the award and interest payable to each claimant separately is not ascertainable at the time of depositing the interest amount before the Tribunal. Underline applied

23. Thus, this Court is of the considered opinion, that the Insurance Company is liable to deduct TDS on the interest paid by it as per the provisions of Section 194A (3)(ix)(ix-a) of the Income Tax Act, and if the assessee is of the view, that the tax has been deducted in excess, then he can always claim refund of the same from the Income Tax Department.

24. Accordingly, this Court is of the considered opinion that the Executing Claims Tribunal, committed material illegality by holding that the Insurance Company is not liable to deduct the TDS. 25. Resultantly, the order dated 1-11-2018 passed by 6th Additional Motor Accident Claims Tribunal, Gwalior in Execution Claim Case No. 107/2018 is hereby set aside."

In 2019 SCC OnLine P&H 1381 **Insurance Company Limited Vs. Janki,** this Court has held as under :-

"36. Thus, if the judgment of the Division Bench of this court in Drawing & Disbursing Officers' case (supra) is to be strictly followed, as this Bench is bound to do in any case till 01.06.2015, i.e. till the amendment of clause (ix) and insertion of clause (ixa) in section 194A(3) of the Income Tax Act, 1961, no interest would be deductible at source at all, even if such interest is beyond Rs. 50,000/- in a particular year. Hence, honouring the ratio of the said judgment of the Division Bench, no tax would be deductible at source uptil 01.06.2015, even if such interest exceeds Rs. 50,000/- in the financial year 2014-15, and upto 01.06.2015 in the financial year 2015-16.

37. Therefore, if the petitioner company has paid the interest on compensation to the claimants prior to

01.06.2015, and deposited TDS with the income tax authorities at that time, even where such interest did not exceed Rs. 50,000/- in any particular financial year, then such deposit has been made by the company wholly contrary to what has been held by the Division Bench of this court in Drawing & Disbursing Officers' case (supra), (though in my opinion, strictly even in terms unamended clause (ix) of sub-clause (3) of Section 194A of the Act of 1961, the tax was deductible at source, whether credited or actually paid).

38. As per applicability of the ratio of that judgment, the claimants cannot be burdened with filing returns seeking a refund, if the fault is that of the company itself (by making an erroneous deduction).

39. Consequently, in view of the aforesaid discussion, these petitions are disposed of with the impugned orders in both petitions set aside.

40. The matters are remanded to the learned Motor Accident Claims Tribunal, Moga, with a direction that if the interest on compensation was paid prior to 01.06.2015, then the petitioner company would pay the claimants the amount of tax it had deducted at source (and seek refund from the income tax authorities if it so desires, by filing a revised income tax return).

41. However, on the other hand, if the interest on the compensation awarded was actually paid after 01.06.2015, and such interest was of an amount above Rs. 50,000/-, the petitioner company would not be liable to pay to the respondent-claimants, the

> **tax deducted at source and paid to the Income Tax Department.**
>
> **42. In such a case, it would be the choice of the respondent-claimants in each of these petitions, to file an appropriate income tax return for the year concerned, seeking a refund of the tax deducted at source, if such tax/any part thereof, was not actually payable by them on account of them being below taxable thresholds.**
>
> **43. The learned Tribunal would consequently pass an appropriate order, upon consideration of the aforesaid facts in each case.**
>
> **44. Upon any such returns being filed, either by the insurance company or by the claimants before the income tax authorities, delay in filing such returns/revised returns, shall be condoned by the appropriate authority, the matter having been settled upto this court only today."**

After hearing learned counsel for the parties and going through the judgments of the different High Courts as above, it is apparent that the views taken by the Division Benches of Bombay High Court and of Gujarat High Court and Single Benches of Andhra Pradesh High Court, Himachal Pradesh High Court and Madhya Pradesh High Court and of this Court are consistent on the points as noted above, whereas the view taken by a Division Bench of this Court in CWP-8951 of 2019 titled as **'Baldai Vs. The Chief Commissioner, Income Tax Department and others'** decided on 27.11.2019 is not consistent with the aforesaid judgments of different High Courts referred to above and, therefore, by following the consistent view it is

directed as under :-

(A) As per interpretation of Section 194-A(1) read with erstwhile clause (IX) and substituted Clause (IX and IX-A) of sub-Section (3), it is clear that the interest on 'income' is chargeable to tax, if it otherwise is not as the provision for deduction of tax at source is not a charging provision. In view of the judgment of a Division Bench of the Gujarat High Court in **Bhoyabhai Hirabhai Bharvag's** case (*supra*); Anadhra Pradesh High Court judgment in **Yaliminti Appanna's** case (*supra*); Himachal Pradesh High Court judgment in **Viyasan Devi's** case (*supra*), Madhya Pradesh High Court judgment in **Ram Khiloni's** case (supra), it is clear :-

(i) The Insurance Company, while depositing the interest exceeding Rs.50,000/- per claimant per year will file a calculation before the MACT as to how much TDS is to be deducted.

(ii) At the first instance, the Insurance Company will apply to MACT for obtaining a declaration 'Form 15-G' of Rule 29-C of Income Tax Act/Rules from the claimants at the time of making payment with interest in order to get relief of responsibility or obligation towards the Income Tax Department and M.A.C.T. will release payment in favour of claimants after the requisite form is signed or thumb-marked by claimants or guardian where claimants are minor.

(iii) In view of the judgment in **Janki's** case (*supra*) passed by the Single Bench of this Court, prior to the amendment of Clause IX and after insertion of Clause IX-A under Section 194(A)(3) of the Income Tax Act, 1961 w.e.f. 1.6.2015 no interest will be deductable at source even if the interest is beyond Rs.50,000/- in a particular year. Therefore, the Insurance Company has to pay the interest of compensation accrued to the claimants prior to 1.6.2015 even if the TDS is deposited with the Income Tax Authorities at that time and the claimants cannot be burdened with filing of return for seeking refund for any fault of the Insurance Company.

Accordingly, CR No.527, 4687 and 6862 of 2019 are dismissed and the others are disposed of by setting aside the impugned orders and the cases are remanded back to the concerned Motor Accident Claims Tribunal with a direction that if the interest on compensation is paid prior to 1.6.2015, then the Insurance Company will pay the amount of tax deducted at source to claimants and the Insurance Company may seek refund from the Income Tax Authorities by filing a revised income tax return. Where the interest on the compensation is actually paid after 1.6.2015, which is exceeding Rs.50,000/- per claimant per financial year, the Insurance Company will pay on securing the 'Form 15-G' of Rule 29-C of the Income Tax Act/Rules.

The parties will appear before the Motor Accident Claims Tribunal, concerned on 31.8.2022 and fresh orders will be passed within a period of one month, thereafter.

(ARVIND SINGH SANGWAN)
August 06, 2022 **JUDGE**
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO