IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 330 of 2018

Decided on: 25.10.2018

National Insurance Company Limited …Petitioner

Versus

Indra Devi and others …Respondent

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?

For the petitioner: Mr.Rama Kant Sharma, Senior Advocate, with Mr.Dinesh Bhatia, Advocate.

For the respondent: Mr. Vinay Kuthiala, Senior Advocate, with Mr.Subhash, Advocate.

Vivek Singh Thakur, Judge. *(Oral)*

Present petition has been filed against direction passed by the Commissioner under Employees' Compensation

Act, Civil Judge, Court No.1, Paonta Sahib, District Sirmaur, H.P. (hereinafter referred to as 'the Commissioner') in Execution Petition No. 93/2013 (14/10 of 16/13), titled Indra Devi and another versus Sohan Singh Thakur (Panta) and others, filed by claimants/respondents No. 1 and 2 for payment of balance awarded amount of ₹ 3,94,135/- alongwith interest @ 12% p.a. from 18th November, 2009 till disposal of execution petition with cost/litigation charges and counsel's fee. During the pendency of execution petition, it was informed on behalf of the petitioner's company that some of the amount has been deducted by the company as TDS, which stands deposited with the Income Tax Department and D.H./claimants/respondents No.1 and 2 can get the said amount refunded from the Income Tax Department. However, the Commissioner has turned down the said plea of petitioner/Insurance Company and ordered attachment of movable property of petitioner/Insurance Company for realization of ₹66,900/- including the amount so claimed to have been deducted by petitioner/Insurance Company as TDS.

2. Facts of the case, in brief, are that the respondents/claimants No.1 and 2 had filed a claim petition being

Claim Petition No.12-ECA/2 of 2011/09 under Section 3 of the Workmen Compensation Act (now Employees' Compensation Act) for compensation on account of death of Shri Rattan Singh, who, while working as a cleaner/conductor, died in an accident, dated 18th October, 2009. The Commissioner allowed the petition on 28th September, 2012, by awarding a sum of ₹ 3,94,135/- alongwith 12% interest with effect from 18th November, 2009 till its deposit. The petitioner-insurance company, being the insurer, was directed to indemnify the insured.

3. In pursuance to the award, the petitioner-insurance company deposited a sum of ₹ 5,32,007/-, in the Court of the Commissioner after deducting an amount of ₹ 34,468/- towards TDS (20%) on interest component payable on the compensation amount, which was deducted by the petitioner-insurance company in compliance of Section 194 (A)(IX) of the Income Tax Act, 1961. The tax was deposited with the respondent No.3-Income Tax Officer (TDS) Sector-2, Panchkula.

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 respondent/petitioner herein for realization of ₹66,900/-.

5. Section 194-A of Income Tax Act, 1961, clearly provides that any person, not being an individual or a Hindu undivided family, responsible for paying to a 'resident' 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 awarded compensation and interest accrued thereon is illegal and is contrary to the law of land.

8. In view of above discussion, this petition is disposed of directing respondent No. 3-Income Tax Officer, Sector-2, Panchkula 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.

9. The amount deposited with the Income Tax Department after deduction at source is ₹34,468/-, whereas the impugned order of realization passed by the Commissioner is ₹66,900/-. Therefore, it is made clear that for payment of balance amount claimed in the execution petition filed by the D.H./claimants/respondents No.1 and 2, the petitioner/Insurance Company has to satisfy the Court of Commissioner and in case any amount beyond ₹34,468/- is found payable to the D.H./claimants/respondents, the Commissioner/Executing Court

shall be entitled to pass any order in accordance with law for failure of the petitioner company to satisfy the award.

10. Petition is disposed of in aforesaid terms. Interim order, dated 20th August, 2018, passed in CMP No. 7915 of 2018 also stands vacated in above terms. The Commissioner is directed to proceed further accordingly. No order as to costs.

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(Vivek Singh Thakur)
Judge

October 25, 2018
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