

accident.

(ii) On 23.4.2017, deceased Amritlal was coming from Khachrod to his Village on his motorcycle bearing Registration No. MP-13-EN-1514. At 6.15 pm., in between Khachrod-Badnagar Road and Nagar Palika Gate, respondent No.7 driving the offending Truck bearing Registration No. GJ-05-AV-6811 coming from opposite side rashly and negligently dashed his motorcycle and ran away. Amritlal died on the spot. He was immediately taken to the hospital and postmortem was conducted. After registration of FIR, a criminal case was registered against the driver and owner of the offending Truck. At the time of accident, the offending truck was insured with the present petitioner.

(iii) At the time of accident, the deceased was 44 years of age and working as a teacher in the Government School. He was getting a salary of Rs.35,751/- per month. The claimants being wife, children, father and mother were dependent on him. After recording the negligence on the part of the driver of the offending vehicle, learned Motor Accident Claims Tribunal , vide award dated 2.7.2019 awarded total compensation of Rs.49,84,000/- along with interest @ 7.5% per annum from the date of application i.e. 23.6.2017 till its the payment. Learned Motor Accident Claims Tribunal has also directed the petitioner, Insurance Co. not to deduct the TDS on the the amount of interest unless it exceeds 50,000/- in respect of each claimant in each financial year while, depositing the the amount of compensation before the Tribunal.

(iv) In compliance of the aforesaid award, the petitioner deposited the the amount of compensation i.e. Rs. 49,84,000/-

and Rs.6,93,118/- towards interest component. As the the amount of interest was exceeding 50,000/- per claimant per financial year, Insurance co. has deducted TDS and deposited in the Income Tax Department as per the requirement of Section 194-A of the Income Tax Act.

(v) Vide order dated 23.10.2019, learned MACT has returned the TDS certificate to the petitioner and directed to deposit the deducted the amount before the Tribunal. The petitioner obtained the opinion from the Chartered Accountant, which is filed as Annexure M-4 with this petition. The Chartered Account has opined that when the interest component exceeds 50,000/-, the person making the payment has to deduct TDS, hence, the insurance company was under a legal obligation to make a deduction because the interest component was exceeding 50,000/- per claimant per year.

(vi) Meanwhile, respondents No.1 to 6 claimants preferred the execution case before the MACT, in which, the MACT has passed the order dated 6.11.2019 by directing the petitioner to deposit the deducted the amount in the light of judgment dated 24.6.2019 passed by this Court in the case of **The Oriental Insurance Co. Ltd. V/s. Smt. Swaroopibai (M.P. No.5090/2018)** and fixed the case for deposition of balance the amount on 29.11.2019.

3. Being aggrieved by the aforesaid two orders, the petitioner/Insurance Co. has filed the present petition before this Court by submitting that the Insurance Co. was a legally bound to deduct the TDS because the interest the amount was exceeding 50,000/-, therefore, in all fairness, learned MACT ought to have directed the claimants to file income tax return

and claim the a refund of the TDS if their total income does not exceed 50,000/- ,hence there is no loss to them. Since the Insurance Co. has already deducted the TDS and deposited the same in the Income Tax Department, the claimants, if they are within the limit of exemption from income tax, can file the return and claim the a refund of the the amount. As there is no loss to them, but the Insurance Co. could not have been directed to act contrary to the provisions of Income Tax Act. Had the Insurance Co. been not deduct the TDS, then the officers of the Insurance Co. would have faced the consequential effects/punitive action from the Income Tax Department, hence the impugned orders be set aside or modified to the extent of directing the claimants be directed to claim a refund from the Income Tax Department by way of filing the return.

4. No one is appearing on behalf of the respondents/claimants despite service of notice hence this Court has appointed Shri Sumeet Neema, learned Sr. Advocate, as *amicus curiae* to assist this Court.

5. Shri Sumeet Neema, learned *amicus curiae*, submitted that similar issue came up for consideration before the Division Bench of High Court of Bombay in the case of **Rupesh Rashmikant Shah V/s. Union of India** (W.P. No.2902/2016 decided on 8.8.2019) in which it has been held that interest awarded in Motor Accident Claim Case from the date of claim petition till the passing of the award or in case of appeal, till the judgment of the High Court in such an appeal, would not be exigible to tax, not being an income. Section 194A of the Income Tax Act is the only provision in the IT Act for deduction of tax at source. The provision of deduction of tax at source is

not a charging provision. Such provision of deducting tax at source cannot govern the taxability of the the amount which is being paid. However, the Division Bench has clarified that these observations would apply to the interest on compensation or enhanced compensation awarded by the MACT or High Court from the date of claim petition till passing of the award or the judgment and the further interest which may be paid for delay in depositing the awarded the 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.

6. Mr. Nema Id. Senior counsel has also placed a copy of the judgment passed by the Division Bench of High Court of Himachal Pradesh in the case of **Court ion its own motion V/s. H.P. State Cooperative Bank Ltd.** (CWPIIL No.9/2014 decided on 15.10.2014) in which scope of circular No.8/2011 dated 14.10.2011 issued by Income Tax authorities directing deduction of income tax on the interest periodically accruing on the deposits made on the court orders to protect the interest of the litigants was considered. The Division Bench came to the conclusion that the provisions of Section 194A of the Income Tax Act does not apply to the accident claim cases and the compensation awarded under the Motor Vehicles Act cannot be said to be a taxable income because the compensation is awarded in lieu of death of a person or bodily injury suffered in a vehicular accident, which is damage and not income, hence hon'ble High Court quashed the order passed by the MACT and directed for a refund of the the amount.

7. Apart from the aforesaid two case-laws, Shri Neema

has also cited judgment of Division Bench of High Court of Allahabad in the case of **Commissioner of Income Tax v/s. Oriental Insurance Co. Ltd.** (IT Appeal Nos. 441/2006 and connected appeals decided on 13.9.2012), in which, it has been held that the award of compensation under the motor accidents claims cannot be regarded as income. The award is in the form of compensation to the a legal heirs for the loss of life of their bread earner. Hence, the interest on such award also cannot be termed as income to the a legal heirs of the deceased or the victim himself. It does not come within the definition of income as mentioned in Section 194A(1) read with Section 2(28A).

8. High Court of Punjab and Haryana in the case of **New India Assurance Co. Ltd. V/s. Sudesh Chawla** (C.R. Nos. 430, 3801 and 1930 of 2015 (O&M) decided on 30.11.2015) has held that the the payment of compensation on account of death and injury is not a business transaction or a receipt of any charges on account of services rendered by any other party. Award of compensation is based on the principle of restitution to place the claimant in the same position in which he would have been had the loss of life or injury not been there. Therefore, the insurance company could not be called upon to pay the TDS/deduct TDS on the interest part on such compensation.

9. The High Court of Punjab & Haryana in the case of **The New India Assurance Co. Ltd. V/s. Savitri Devi & another** (CR No. 6784/2016 and other connected civil revisions decided on 4.4.2018) has considered the issue – whether the insurance company can deduct income tax at source (TDS) on the interest paid on the compensation paid under Motor Vehicles

Act, 1988? and answered that, when there is a conflict between social welfare legislation and taxation legislation, then social welfare legislation would prevail since it sub-serves larger public interest. The Motor Vehicles Act is one such legislation. In case of victims, they have already been subjected to the rigors of law by taking rounds of the courts for a year or some time decades to get the compensation for the loss they have already suffered. Therefore, the interest paid on account of delayed the payment of compensation cannot be subjected to TDS and dismissed the revisions.

10. The High Court of Judicature at Madras in the case of **The Managing Director V/s. Chinnadurai** [CRP (PD) No.1343/2012 and M.P. No.1/2012 decided on 2.6.2016] has held that the compensation awarded or the interest accruing therein from the compensation that has been awarded by the MACT cannot be subjected to TDS and the same cannot be insisted to be paid to the Tax Authorities since the compensation and the interest awarded therein does not fall under the term 'income' as defined under the Income Tax Act.

11. On the other hand, Shri S.V. Dandwate, learned counsel appearing for the petitioner/Insurance Co., has also placed reliance over the judgment passed by this Court in the case of **United India Insurance Co. Ltd. V/s. Ramlal & others** : **2012 ACJ 1157**, in which, the deduction made by the Insurance co. has been upheld. This Court was of the view that the interest awarded has to be spread over in the number of years from the date of filing of claim petition till the date of the payment because the right to receive compensation arises immediately on the occurrence of an 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. It has also been held that before realising the the amount of interest, the claimant shall be required to submit an affidavit to the effect that he 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 Co. so that concerned Insurance Co. gets relieved of its obligation of the payment of TDS.

12. The this Court in the case of **The Oriental Insurance Co. Ltd. V/s. Smt. Swaroopibai (M.P. No.5090/2018)** has also held that the Insurance Co. is liable to deduct the TDS on the interest paid by it as per 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 a refund of the same from the Income Tax Department.

13. Shri Dandwate, learned counsel for the petitioner, has placed heavy reliance over the judgment of this Court in the case of **National Insurance Co. Ltd. V/s. Smt. Draupadibai : 2011 (1) MPLJ 251**, in which, it has been held that the interest payable to each of the claimants being Rs.20,208.33, Insurance Co. does not entitled to deduct the tax at source. While taking the aforesaid view, this Court was of the opinion that the word “such income” in sub-section (3)(ix) refer to the interest income covered by sub-section (1), therefore, a reading of sub-section (1) and sub-section (3)(ix) together makes it clear that it is the

interest income of a resident in a financial year which is to be taken into account for calculating the limit of 50,000/-. This Court has made it clear that the aforesaid interpretation of Section 194-A of IT Act applies only in cases where the compensation the 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 the amount before the Tribunal. In sum and substance, this Court has held that if the the amount of interest exceeds Rs.50,000/-, then it is obligatory on the part of the Insurance Co. to deduct the TDS.

14. Shri Sumeet Neema, learned sr.counsel being amicus curiae has also produced the copy of the judgment of High Court of Rajasthan, Jaipur Bench in the case of **Kailash Narain Gupta V/s. Commissioner of Income Tax : [1996] 89 TAXMAN 532 (Raj.)** in which it has been held that the Tribunal was justified in holding that the interest the amounting to Rs.5,757/- awarded u/s. 110CC was a revenue receipt and, thus, exigible to tax and answered the reference in favour of the revenue and against the assessee.

15. In one of the case of **Smt. Sharda Pareek V/s. Assistant Commissioner** (SLP Nos. 20629-20631 of 2017 against the judgment of Division Bench of High Court of Rajasthan in IT Appeal Nos. 156 and 162 of 2012 and 199 of 2015 decided on 26.4.2017), in which it was held that the interest received on compensation awarded by the Tribunal payable to the claimant on death of a victim would fall within

the ambit of interest u/s. 2(28A) and could be subjected to tax, the apex Court has granted the leave.

16. Therefore, it is clear from the aforesaid judgments that there are divergent views on this point – whether the Insurance Co. can deduct the TDS if the the amount of interest exceeds Rs.50,000/- or not ?

17. In the present case, while passing the award dated 2.7.2019, the MACT has already held that the claimants are entitled for total compensation of Rs.49,84,000/- along with interest @ 7.5% per annum from 23.6.2017 till its the payment. Out of the aforesaid the amount, a further direction has been given that claimant No.1/respondent No.1 shall be entitled to receive Rs.4,84,000/- in cash Rs.3,00,000/- be paid in cash to each of three sons of the deceased and Rs.3,00,000/- - 3,00,000/- be further deposited in the form of FDR in the nationalised bank in which interest shall be paid to respondent No.1 periodically. ***By way of direction No.(vi), learned MACT has restrained the Insurance Co. to deduct income tax on the interest payable to respondent No.1 unless it exceeds Rs.50,000/- in view of the judgment passed by this Court in the case of Ramlal (supra).*** The aforesaid judgment of the MACT has attained finality as neither the claimants nor the Insurance Co. has filed any appeal before this High Court . The Insurance Co. has already been directed by learned Motor Accident Claims Tribunal to examine whether the interest payable to respondent No.1 was exceeding Rs.50,000/-, then only the interest is liable to be deducted. Hence, in the present case, the issue in regards to the deduction of TDS on the interest components payable to respondent No.1 is not liable to be considered again .

18. This Court in the aforesaid three cases i.e. Ramlal; Smt. Swaroopi Bai; and Draupadibai (supra) has consistently held that the tax is payable on the interest accrued on the the amount of compensation under Motor Vehicle Act with a rider that the interest should not be more than Rs.50,000/- per claimant per financial year. After the aforesaid award, the Insurance Co. has calculated the interest payable on entire the amount of compensation and deducted the TDS @ 20% i.e. Rs.1,73,297/-.

19. In the case of Ramlal (supra), this Court has held that it is the responsibility of the Insurance Co. to obtain declaration in Form 15-G of rule 29-C of the Income Tax Rules from the claimants at the time of the payment of compensation in order to get relieved of obligation of the payment of TDS. In the case of **Draupadibai**(supra) also, this Court has held that after distribution of the amount between the claimants and if the interest payable to each claimants comes below Rs.50,000/-, then the Insurance Co. is not entitled to deduct the TDS while depositing the the amount of interest before the Tribunal. In the present case, the MACT has only directed the Insurance Co. to ascertain the interest payable to respondent No.1 only and if it exceeds Rs.50,000/-, then only the deduction of TDS be made. Learned MACT in its order dated 6.11.2019 has also directed the Insurance Co. to deduct the TDS if the the amount of interest payable to each claimant exceeds Rs.50,000/-. The Insurance Co. ought not to have challenge said order dated 6.11.2019 because it has been passed as per the judgments passed by this Court in the case of Ramlal; Smt. Swaroopi Bai; and Draupadibai (supra). At the most, the Insurance Co. can file the

details of calculation of the the amount of interest , payable to each claimants and explain to the MACT that the same is exceeding Rs.50,000/- per month and the deduction of TDS was justified. If such details are filed, then the direction given in the case of Ramlal (supra) shall apply and it would be the discretion of claimants to claim a refund from the Income Tax Department or not.

20. Before parting with the case, this Court appreciates the assistance rendered by Shri Sumeet Neema who was appointed as amicus curiae.

With the aforesaid, this petition stands disposed of.

**(VIVEK RUSIA)
JUDGE**

Alok/-