IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2001 of 2001

Date of decision: 09.10.2015

Sumer Singh and another

..... Appellants

Versus

Parkash Chander Yadav and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the digest?

PRESENT: Mr. Vijay Saini, Advocate for
Mr. Rakesh Nehra, Advocate for the appellants.

Mr. Amit Kundra, Advocate
for respondent No. 2-Insurance Company.

RAMENDRA JAIN, J. (ORAL)

The parents of deceased-Sonu have preferred this appeal for enhancement of compensation by modifying the impugned Award dated 10.02.2001 passed by the learned Motor Accident Claims Tribunal, Jhajjar (for short 'the Tribunal').

2. Brief facts of the case are that on 23.10.1999, Sonu (since deceased) aged about 13 years along with his brother Jasbir Singh, was paddling his bicycle from his workshop situated at Dujana Chowk to village Dujana and in the process of crossing the road, a three-wheeler

bearing registration No. HR-46-A-3077, driven by respondent No. 1 in a rash and negligent manner, while coming from Jhajjar side struck against him. As a result thereof, Sonu received multiple injuries and finally succumbed to them. FIR No. 382 was registered against respondent No. 1 on the same day, at the behest of Jasbir Singh brother of the deceased. The appellants being parents of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act') for grant of compensation of ₹ 5 lacs by claiming monthly income of their deceased son at ₹ 4000/- per month.

3. Upon notice, respondent No. 1 denied the contents of the claim petition in toto by pleading that a false FIR was registered against him. Respondent No. 2-Insurance Company in its separate written statement took the stand that it was not liable to make payment of any compensation, because respondent No. 1 had violated that terms and conditions of insurance policy. The claim petition qua it was liable to be dismissed.

4. The learned Tribunal after framing necessary issues and recording evidence to the satisfaction of parties, awarded a lump sum amount of ₹ 1 lac to the appellants-claimants against the death of their son with the observation that the deceased being a minor was not an earning hand.

5. Learned counsel for the appellants-claimants relies upon ***Kishan Gopal and another* Vs. *Lala and others,* 2013 (4) RCR (Civil) 276,** to contend that the learned Tribunal has erred in not taking the notional income of deceased, while awarding compensation. More so,

the learned Tribunal ought to have awarded interest at least @ 18 % per annum on the amount of compensation.

6. On the other hand learned counsel for respondent No. 2-Insurance Company, refuted the above submissions.

7. After giving my thoughtful consideration to the submissions made by both the sides, I am of the considered view that the compensation awarded to the appellants-claimants by the learned Tribunal is quite on lower side. In ***Kishan Gopal's case (supra),*** the Hon'ble Apex Court had taken the notional income of a child aged about 10 years at ₹ 30,000/- per annum and applied the multiplier of 15 and awarded the compensation to the tune of ₹ 4,50,000/-, besides ₹ 50,000/- under conventional heads like loss of love and affection, funeral expenses, last rites etc. Though in that case, age of the parents of the deceased was taken into consideration, but as per the latest proposition of law, it is the age of deceased which has to be taken into consideration. Reference in this regard can be made to a recent judgment dated May 15, 2015 of the Hon'ble Supreme Court in ***Munna Lal Jain and others Vs. Vipin Kumar Sharma and others, 2015(3)RCR (Civil) 447.*** In the instant case, unrebutted age of the deceased at the time of his death was 13 years. In the Second Schedule appended to the Act under Section 163A of the Act, multiplier of 15 has been prescribed against the death of a person up to the age of 15 years. Therefore, by taking the notional income of the deceased at ₹ 30,000/- per annum and by applying the multiplier of 15, the compensation comes to ₹ 4,50,000/- (30000 x 15) which ought to have been awarded by the learned Tribunal. Besides the

above amount of ₹ 4,50,000/-, a sum of ₹ 50,000/- is also awarded to the appellants-claimants under the conventional heads like loss of love and affection, funeral expenses, last rites etc. on the basis of ***Kishan Gopal's case (supra).*** Since, the learned Tribunal has already awarded the interest @ 12% per annum to the appellants-claimants from the date of filing of petition till its realization in the impugned Award, the same rate of interest is also awarded to the appellants-claimants on the enhanced amount of compensation, which comes to ₹ 4,00,000/- [₹ 4,50,000/- + ₹ 50,000/- = ₹ 5,00,000/- **-** ₹ 1,00,000/- (already awarded by the learned Tribunal] from the date of filing of the claim petition, before the learned Tribunal till its realization. The amount of compensation shall be shared equally by both the appellants-claimants. The interest rate is not enhanced in this case, keeping in view the fact that the prevalent rate of interest in the nationalized banks as on today is approximately @ 8% per annum.

8. With the above modification in the amount of compensation, the instant appeal is party allowed.

October 09, 2015 **(RAMENDRA JAIN)**
rishu **JUDGE**