IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4485 of 2004 (O&M)
Date of Decision: February 26, 2015

Sumitra Devi and another

..Appellant(s)

Versus

Dilbagh Singh & others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Verma, Advocate
for the appellants.

Mr. R.C. Kapoor, Advocate
for respondent no.3.

*****

ANITA CHAUDHRY, J.

CM No.18908-CII of 2004

For the reasons set out in the application, same is allowed and delay of 17 days in filing the appeal is condoned.

1. This appeal has been preferred by the appellants-claimants seeking enhancement of the compensation allowed to them by the Motor Accident Claims Tribunal, Panipat (here-in-after referred to as the Tribunal), vide award dated 28.04.2004.

2. Sandeep, aged 8 years died in a vehicular accident which occurred on 14.09.2003. He along with his brother Suraj Kumar were crossing the G.T. Road when a truck hit Sandeep. A claim petition was filed under Section 163-A of the Motor Vehicles Act.

3. The Tribunal on appreciation of the oral and documentary evidence took the notional income at Rs.15,000/- but deducted 1/3rd towards personal expenses and applied the multiplier of 15 to calculate the loss at Rs.1,50,000/-. The Tribunal noted that no evidence had been led with regard to the family background of the child, his academic excellence or achievements of his siblings. The grievance of the appellants is that deduction of 1/3rd towards personal expenses where the notional income was taken, were arbitrary and unreasonable. It was also submitted that notional income should be taken at a higher rate. Reliance was placed upon ***Puttamma and others Vs. K.L. Narayana Reddy and another 2014(1) RCR (Civil) 443, Kishan Gopal and another Vs. Lal and others 2013(4) RCR (Civil) 276 and a judgment of this Court in Karam Singh and another Vs. Ajit and others, FAO No.4226 of 2012, decided on 04.11.2014***.

4. Per contra, the counsel appearing for the insurance company supported the judgment.

5. A perusal of the judgment reveals that no evidence was led by the claimants that the child was contributing or was assisting his parents in any work. The child was only 8 years old, therefore, the notional income of Rs.15,000/- was rightly taken. In *Puttamma's* case (supra), the Hon'ble Apex Court had referred to the proposals made to amend the Motor Vehicle Bill, 2012 which had been passed by the Rajya Sabha. The Bill was introduced to substitute Section 163-A of the

Motor Vehicles Act, thereby amending the Second Schedule which finds detail reference in the judgment. The Hon'ble Apex Court had observed as under:-

> *"55. From the proposed Bill we find that there is a proposal to change the multiplier applicable for different age groups; it does not contemplate schedule structure of compensation. The factors to be considered for working out compensation are (a) age of the victim (b) multiplier (c) annual income up to Rs.1,00,000/- (the maximum annual income for calculation of compensation will be deemed to be Rs.1,00,000/- even if the income exceeds Rs.1,00,000/-). Separate provisions have been made for grievous injury and non-grievous injury etc.*
>
> *56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of the Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs.1,50,000/- (rupees one lakh and fifty thousand) or amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the Act, 1988."*

6. As the notional income was taken, therefore, there could have been no deduction towards personal expenses. The submission is accepted. The compensation would thus be Rs.15,000/- X 15 = Rs.2,25,000/-. I would allow Rs.50,000/- more on the head of loss of love and affection and Rs.25,000/- for funeral expenses; raising the total to Rs.3,00,000/-. The Tribunal had allowed Rs.1,50,000/- which shall be deducted and the remaining amount shall be paid to the appellants within two months, failing which it shall carry interest @ 6% from the date of filing of appeal till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 26, 2015
sunil