

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

F.A.O No. 5147 of 2012 (O&M)

Date of decision:- 14.08.2015

Surender Singh @ Sunder Singh and another

...Appellants

Versus

Pawan @ Tiku and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr. Krishan K Chahal, Advocate
for the appellants.

Mr. Vishal Aggarwal, Advocate
for respondent No.3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J. (Oral)

CM-3150-CII-2015

Learned counsel for respondent No.3 seeks permission to withdraw the present application as the matter has not been compromised between the parties.

Dismissed as withdrawn.

F.A.O No. 5147 of 2012

1. The present appeal has been preferred by the claimants-appellants, seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Bhiwani (for

short, 'the Tribunal') to the tune of Rs. 1,30,000/-, vide impugned award dated 16.11.2011.

2. The facts which are not in dispute are that on 17.03.2010, complainant-Vishal along with Rahul was going to the fields known as Gudiawala on motorcycle bearing registration No. HR08A-3340 owned by Rajpal to bring gram from there. When they reached near Zee School Hansi Road, a Pick up Dala bearing registration No.HR-62-1459 being driven at a high speed and in a rash and negligent manner came from Hansi side and hit the motorcycle bearing registration No.HR-08A-3340 of Rahul (Since deceased). Both the occupants of the motor cycle fell down and suffered injuries. Meanwhile, Raj Pal also reached at the spot who took them to General Hospital Bhiwani, where Rahul was declared dead and Vishal was admitted. On the statement of Vishal, FIR No.108 dated 17.03.2010 under Sections 279/337-A IPC was registered against respondent No.1 in Police Station Sadar Bhiwani.

3. The deceased-Rahul in the present case was 17 years old child at the time of the accident. The deceased was a minor and was unmarried and student of 12th Class. His father when appeared in the witness box as PW-2 deposed that he was engaged in profession of agriculture and dairy farming and was also doing the tuition work in the village and was earning Rs.10,000/- per month but there is not

record to prove this fact and thus, the tribunal has taken the notional

income of the deceased at Rs.15,000/- per annum and after deducting 1/3rd and by applying the multiplier of 11, in view of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77***, the compensation has been assessed at Rs.1,10,000/-. He was also allowed Rs.20,000/- towards funeral expense. The total compensation awarded to the claimants was Rs.1,30,000/-. On the other hand, the injured-Vishal was given the compensation of Rs.15,000/-.

4 Learned counsel for the appellants contends that the Tribunal has erred in awarding the compensation, in view of the judgment of Hon'ble the Supreme Court in a case of ***“Kishan Gopal Vs. Lala and others 2013 AIR SC (Civil) 2465”*** wherein in a case of death of child aged 10 years who died in the year 1992, Hon'ble the Supreme Court took the notional income of the deceased at Rs.30,000/- and applied the multiplier of 15 and the compensation came to Rs.4.50 lacs, Rs,50,000/- was given towards loss of love and affection, funeral expenses, last rites etc. Hon'ble the Supreme Court while dealing with a case filed under Section 163-A of the Motor Vehicles Act laid criteria for awarding the compensation in a case filed under Section 163-A of the Motor Vehicle Act. Hon'ble the Supreme Court in para 18 of the judgment has held as under:-

“18. For this purpose, it would be necessary for us to

refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:

*“6. Notional income for compensation to those who had no income prior to accident: (a) Non-earning persons – Rs.15,000/- p.a.” The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of **Lata Wadhwa & Ors. v. State of Bihar & Ors. 2001***

(4) RCR (Civil) 673, while examining the tortuous liability of the tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the

determination made was grossly inadequate and the observation was further made that loss of children is irrecusable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old,

*who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in **Kerala SRTC v. Susamma Thomas 1994(2) SCC 176**, which is referred to in **Lata Wadhwa's case** and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the*

aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.”

5. In the present case, the compensation is being reassessed as per the judgment titled “**Rajesh and others Vs. Rajbir Singh and others, 2013(9) SCC 54**” and **Kishan Gopal's case (supra)**, which reads as under:-

Sr. No.	Heads	Calculations
(i)	Notional Income	Rs.40,000/-
(ii)	50% deduction towards personal expenses	Rs.40,000-Rs.20,000= Rs.20,000/-
(iii)	Compensation after multiplier of 18 is applied	Rs.20,000X18=Rs.3,60,000/-
(iv)	Loss of love and affection to parents	Rs.1,00,000/-
(v)	Funeral Expenses	Rs.25,000/-
(vi)	Total Compensation awarded	Rs.4,85,000/-
(vii)	Enhanced amount of compensation	Rs.4,85,000-Rs.1,30,000=Rs.3,55,000/-

8. The enhanced amount of compensation of Rs.3,55,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of **Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539**. The remaining conditions of disbursal

of amount shall remain unaltered.

9. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

August 14, 2015

ps-I/G Arora

(**RITU BAHRI**)
JUDGE