IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.3790 of 2013 (O&M)
Date of decision : 10.09.2015

Ramesh & another ...Appellants

versus

Anil & others ...Respondents

CORAM: **HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Ashok K.Sharma, Advocate
for the appellants.

Respondents No.1 and 2 ex-parte.

Mr. Diwan S.Adlakha, Advocate for respondent No.3.

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<u>RITU BAHRI , J (Oral)</u>

<u>CM No.15359-CII of 2013</u>

There is a delay of 63 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 63 days in filing the appeal is condoned.

CM stands disposed of.

<u>FAO No.3790 of 2013</u>

The appellants/claimants have come up in appeal against the award of the Motor Accidents Claims Tribunal, Jind (hereinafter referred to as "the Tribunal") dated 14.12.2012, whereby the Tribunal has awarded a compensation of Rs.3,20,000/- to the appellants/claimants on account of death of Vasu Dev, who died in a road accident, which took place on 20.02.2011.

Facts not in dispute are that on 20.02.2011 at about 12.30

p.m. Vasu Dev (since deceased) was returning to his house in village Kalwan while riding his bicycle. His grand father Om Parkash was following him on foot and they both were coming from their filed known as Buntiwala. When deceased reached near the fields of Khushiya Pandit of village Kalwan then offending Tata Indigo driven by respondent No.1 in rash and negligent manner struck against the bicycle of Vasu Dev from behind and due to impact of this accident Vasu Dev alongwith his cycle fell down on pucca road and sustained grievous and serious injuries on vital part of his body. He was shifted to General Hospital, Tohana by Om Parkash after arranging a vehicle. The attending doctors declared him brought dead. The accident took place due to negligence on account of rash and negligent driving of respondent No.1 by driving the offending Tata Indigo.

On account of death of Vasu Dev, the claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988. The Tribunal accepted the claim petition by accepting the deposition of PW1 Om Parkash, who is the complainant in the FIR. He stated that the accident took place when the child Vasu Dev was riding his bicycle and returning to his house, then offending Indigo Car driven by respondent No.1 rashly and negligent. His version corroborated with the version in the FIR as well as PW2 Ramesh, father of the deceased. PW3 Parveen Kumar, Addl. Ahlmad of the Court proved the FSL report dated 15.03.2011 Ex.P2 and stated that the insurance cover note is valid from 02.05.2010 to 01.05.2011 qua the offending car. The finding of the Tribunal does not require any interference. The Tribunal accepted the petition and after assessing the notional earnings of the deceased at Rs.15,000/- per annum. Dependency of the claimants after deducting the 1/3rd on personal expenses came to Rs.10,000/- per annum. Multiplier of 16 was applied. Thus, the claimants were held entitled to the compensation of Rs.1,60,000/- (Rs.10,000/- x 16). The claimants were further awarded a sum of Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. Rs.75,000/- were also awarded as non-pecuniary damages. Thus, a total compensation of Rs.3,20,000/- was awarded to the compensation.

Feeling dissatisfied with the impugned award, the appellants/claimants have preferred the present appeal.

I have heard counsel for the appellant and perused the case file.

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, 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:*
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> *"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 x 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."*

Learned counsel for the appellants has further referred to a judgment passed by this Court in a case of ***Sh. Amandeep Singh vs. The Oriental Insurance Co. Ltd and others***, passed in ***FAO No. 5 of 2008, decided on 11.09.2014*** whereby in similar circumstances, while dealing with the claim petition filed under Section 163-A of the Motor Vehicles Act, this Court took the notional income of child at Rs.30,000/- who died in the year 2006 and thereafter, awarded him lump sum amount of Rs.1 lacs under the conventional heads of loss of love and affection, funeral expenses and last rites.

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"***, ***Kishan Gopal's case (supra) and Amandeep's case (supra)***, which reads as under:-

Sr. No.	**Heads**	**Calculation**
(i)	Notional Income	Rs.30,000/-
(ii)	Compensation after multiplier of 15 is applied	Rs.30,000X15=Rs.4,50,000/-
(iii)	Loss of love and affection to parents, funeral expenses, loss of estate	Rs.1,00,000/-
(iv)	Total Compensation awarded	Rs.5,50,000/-
(v)	Enhanced amount of compensation	(Rs.5,50,000/-) - (Rs.3,20,000/-) = Rs.2,30,000/-

The enhanced amount of compensation of **Rs.2,30,000/-** 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.

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

10.09.2015 **(RITU BAHRI)**
Vinay **JUDGE**