IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4262 of 2014 (O&M)
Date of Decision : 09.12.2015

Sandeep Kaur and another ....Appellants

Versus

Harjot Singh @ Jota and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arnav Sood, Advocate
for the appellants.

Mr. Arun Takhi, Advocate
for respondents no. 1 and 2.

Mr. Amit Jaiswal, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal filed by claimants against award dated 15.02.2014 whereby they were allowed compensation of ₹ 1,75,000/- for the death of their daughter Ramandeep Kaur in a motor accident.

2. The case of claimants, in brief, is that on 28.05.2013, Ramandeep Kaur with her grandmother Manjit Kaur was returning from Jalandhar to village Ahrana Kalan. They boarded bus No. PB-32-G-1226 (later referred to as 'the offending vehicle') which was being driven by respondent no. 1-Harjot Singh @ Jota. At about 01.00 p.m., the bus reached Bus Stand Ahrana Kalan. Ramandeep Kaur alongwith her grandmother and other passengers alighted from bus and were crossing the road in front of the bus. Respondent no. 1 instead of waiting for the passengers to cross the road, started the bus without giving any horn and hit Ramandeep Kaur and Manjit Kaur as a result of

which they both fell on the road. Manjit Kaur sustained simple injuries while Ramandeep Kaur sustained serious injuries and was immediately rushed to the hospital but on the way succumbed to the injuries received by her. The deceased was 5 years of age and was studying in 1st class of Government Primary School, Ahrana Kalan.

3. Respondents no. 1 and 2 contested the claim petition *inter alia* pleading that no accident had taken place as alleged by claimants. Respondent no. 3 i.e. Oriental Insurance Company Ltd. insurer of the bus contested the claim petition alleging collusion of claimants and respondents no. 1 and 2 and denied that any accident, as alleged by claimants, had taken place. The Tribunal observed that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1 and awarded compensation of ₹ 1,75,000/-. While calculating the amount of compensation, notional income of the deceased was taken as ₹ 15000/- per annum. After making deduction of 1/3rd from notional income and applying the multiplier of 15, the amount of dependency was worked out as ₹ 1,50,000/-. A sum of ₹ 15,000/- was allowed towards funeral expenses and ₹ 10,000/- towards loss of estate while awarding the total compensation of ₹ 1,75,000/-.

4. Learned counsel for the appellants has argued that firstly the Tribunal has taken notional income of the deceased as ₹ 15,000/- per annum, which is not justified and secondly, the Tribunal has further applied deduction of 1/3rd in the notional income. While referring to judgment of this Court in case of

<u>Oriental Insurance Co. Ltd.</u> vs. <u>Smt. Suman and others</u>, FAO NO. 7762 of 2015 decided on 19.11.2015, learned counsel for the appellants has argued that notional income of the deceased should have been taken as at least ₹ 30,000/- per annum.

5. Learned counsel for respondent no. 3-Insurance Company has argued that the deceased was a young girl of 5 years. She was a student. The Tribunal has rightly assessed her notional income as ₹ 15,000/- per annum as per 2nd Schedule under Section 163-A of the Motor Vehicles Act (later referred to as 'the Act').

6. The observations in case of ***Suman (supra)*** are squarely applicable to the facts of present case. In that case, the deceased was also 5 years of age and the Tribunal had taken his notional income as ₹ 30,000/- per annum. The argument of counsel for the Insurance Company that the income of deceased assessed as ₹ 30,000/- per annum was on higher side, was discarded with the observations as follows:-

> *"3. The argument of learned counsel for the appellant-Insurance Company has no merit. In case of* ***<u>Kishan Gopal and another</u> vs. <u>Lal and others</u>, 2014 (1) SCC 244****, the accident had taken place in the year 1992 and parameters allowing compensation in case of* ***<u>Lata Wadhwa</u> vs. <u>State of Bihar</u> 2001 (8) SCC 197*** *were considered. In view of the rupee value coming down drastically from the year 1994, the notional income of the deceased, who was 10 years of age, was assessed as ₹ 30,000/- per annum. In the instant case, the accident has taken place on 23.12.2012 and applying the parameters in case*

*of **Lata Wadhwa (supra)**, notional income of the deceased who was 5 years of age, taken as ₹ 30,000/- is not on higher side. The claimants have lost their child of the age of 5 years. Income of the deceased cannot be assessed using any parameter. In 2nd Schedule under Section 163-A of the Act, table prescribed for quantum of compensation permissible for 3rd party fatal accident/injury case claim was incorporated as per price index prevalent about two decades ago. With sharp increase in price index and decline in the value of rupee, to assess the notional income of an un-earning member as ₹ 15,000/- per annum is not justified. The Tribunal while assessing notional income of the deceased as ₹ 30,000/- per annum has not committed any error of law rather the approach by the Tribunal was very moderate calling for no interference.*

7. In case of ***Kishan Gopal and another** vs. **Lala and others**, 2014 (1) SCC 244*, the Apex Court has observed that the loss of children is irrecoupable and no amount of money could compensate the parents. It also took note of notional income fixed in the 2nd Schedule under Section 163-A of the Act and observed as follows:-

"18. ....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 ₹ 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 ₹ 30,000/-................"*

8. The above observations were made with regard to the accident that had taken place on 19.07.1992 and in the instant case the date of accident is 28.05.2013. Under these circumstances, it will be appropriate to take notional income of the deceased, who was 5 years of age, as ₹ 30,000/- per annum. The amount of compensation, as such, works out to be ₹ 4,50,000/- (30000x15) and after adding compensation as allowed by the Tribunal under the conventional heads, the total amount of compensation comes to ₹ 4,75,000/-.

9. In view of my above discussion, the appeal has merits and the same is accepted. The amount of compensation awarded to claimants is enhanced from ₹ 1,75,000/- to ₹ 4,75,000/-. The claimants shall also be entitled to interest @ 7.5% per annum on the enhanced amount of compensation from the date of filing of the petition till its realization. Respondent no. 3 being insurer of the offending vehicle shall be liable to pay the enhanced amount of compensation.

December 09, 2015 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters or not? Yes/No