

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 790 of 2014

Date of decision : December 01, 2015

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Munni Bhai and another

.....Appellants

Versus

Waryam Singh and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Ms. Ekta Thakur, Advocate for the appellants.

Mr. K.K Chaudhary, Advocate for respondents no. 1 to 3.

Mr. A.S Sidhu, Advocate for respondent no.4.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

This appeal has been filed by the claimants-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') in claim petition **MACT Case No. 24 of 2010** filed under Section 163-

A of the Motor Vehicle Act, 1988 vide award dated 2.11.2013 on

account of death of Santosh, son of the claimants-appellants.

FACTS NOT IN DISPUTE

The brief facts of the case are that on 23.6.2010 at about 11.00 a.m, appellant-claimant no.2 was standing in front of college on Chandigarh Ludhiana road, in the area of Village Mampur. Santosh deceased was also standing with him on his correct left side. Respondent no.2 came driving Tata 709 Canter No. PB-10-CA-8418 in rash and negligent manner at high speed and hit Santosh. Respondent no.2 then lost control over his truck and hit another canter no. PB-10-BH-6399. Santosh was four years old at that time. In the accident, he suffered multiple injuries on vital organs of his body including head injury. He was taken to hospital where he was declared brought dead. In this regard FIR No. 167 dated 23.6.2010 under Sections 279, 304-A, 427 IPC was registered at Police Station, Kharar.

COMPENSATION ASSESSED BY THE MACT

On account of death of Santosh, his parents Munni Bhai and Bhagwan Dass-appellants filed claim petition under Section 163-A of the Motor Vehicles Act, 1988, which was accepted partly by the Tribunal and a total sum of Rs.1,54,500/- was awarded as compensation on account of death of Santosh. The income of Santosh as per Second schedule was taken as Rs15,000/- and in view of age of the deceased at the time of accident and Second Schedule in Motor Vehicles Act, 1988, multiplier of 15 was applied for determination of death compensation. In this way, the compensation

worked out to be Rs.2,25,000/-. In view of note to Part I of the Second Schedule of Motor Vehicles Act, 1988 1/3rd cut was imposed in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. After the 1/3rd cut, the amount was reduced to Rs.1,50,000. Moreover, in view of Para 3 of the Second Schedule, claimants were found entitled to payment of Rs.2000/- towards funeral expenses, Rs.2500/- towards loss of estate. Hence the claimants were found entitled to total compensation of **Rs.1,54,500/-**. Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. The deceased died as a result of the accident.

Reference in this case can be made to a judgment of this Court of **Kishan Gopal and another vs. Lala and others 2013(4) RCR (Civil) 276**, wherein the appellants were the parents of deceased Tikaram, a ten year old child, who died in a road accident which took place on 19.7.1992. Notional income of child was taken at Rs.30,000/-. Multiplier of 15 was applied to Rs.30,000/- which came to Rs.4.50 Lakhs. Rs.50,000/- was awarded under conventional heads (i.e loss of love and affection, funeral expenses, last rites). Reliance in this case was placed upon a judgment of Hon'ble the Supreme Court in the case of **Lata Wadhwa and others**

vs. State of Bihar and others 2001(4) RCR (Civil) 673 especially with regard to the second schedule to Section 163-A of the M.V Act for calculating the compensation of a victim below the age of 15 years. Hon'ble the Supreme Court proceeded to take the notional income at Rs.30,000/-. This was done keeping in view that the rupee value has come down drastically from the year 1994 when the notional income of non earning member prior to the date of accident was fixed at Rs.15,000/- per annum. The relevant portion of paragraph 18 of the judgment of the Supreme Court is reproduced 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.](#)[2], 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 irrecoupable 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 v. Delhi Transport Corporation](#)[3], 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](#)[4], 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. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of [Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy](#) [5], for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified.

Reference in this case can also be made to a judgment of Hon'ble the Supreme Court of India in the case of **R.K Malik and another vs. Kiran Pal and others 2009(3) RCR (Civil) 403**

wherein 29 children below the age of 18 years died in a bus accident. Non-pecuniary compensation of Rs.75,000/- was granted in respect of each child.

Following the ratio laid down by Hon'ble the Supreme Court of India in **Kishan Gopal's case (supra)**, and a judgment of this Court in **FAO No. 3790 of 2013** titled, **'Ramesh and another vs. Anil and others'** decided on **10.09.2015**, wherein also the notional income of the child has been taken to be Rs.30,000/-, the notional income of deceased in this case is also taken as Rs.30,000/-

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of **'Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54'** and **Krishan Gopal's case (supra)** and **R.K Malik's case (supra)**. Accordingly, the compensation is re-assessed as under:-

<i>Sr. No.</i>	<i>HEADS</i>	<i>CALCULATION</i>
(I)	Notional income	Rs.30,000/-
(ii)	Compensation after multiplier of 15 is applied	[Rs.30,000/-x15] Rs.4,50,000/-
(iii)	Non-pecuniary damages	Rs. 75,000/-
	TOTAL COMPENSATION AWARDED	Rs. 5,25,000
	Enhanced amount of compensation	(Rs.5,25,000/-)- (Rs.1,54,500/-) =Rs.3,70,500 /-

The enhanced amount of compensation of **Rs. 3,70,500/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of

filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. 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.

December 01, 2015
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(RITU BAHRI)
JUDGE