

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

1. F.A.O No. 7973 of 2014 (O&M)

Smt. Meera Devi and another ...Appellants

Versus

Rajesh Kumar and others ...Respondents

2. F.A.O No. 7924 of 2014 (O&M)

Suresh Kumar Sharma and another ...Appellants

Versus

Rajesh Kumar and others ...Respondents

Date of decision:- 30.10.2015

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr. S.N. Yadav, Advocate
for the appellants in both FAO's.

Mr. N.S. Panwar, Advocate
for respondent No.2 in both FAO's.

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

RITU BAHRI J. (Oral)

C.M. No. 21434-CII of 2015

For the reasons mentioned in the application, delay of 197
days in filing the present appeal is condoned.

The application stands disposed of accordingly.

F.A.O No. 7973 of 2014

1. This order of mine shall dispose of the above two appeals

GAURAV ARORA
2015.11.18 16:01
I attest to the accuracy and
integrity of this document

i.e F.A.O Nos. 7973 and 7974 of 2014 wherein challenge is to the award dated 20.09.2013 passed by learned Motor Accident Claims Tribunal, Narnaul granting compensation to the appellants. However, for the facility of reference, the facts are being taken from F.A.O No. 7973 of 2014.

2. The facts which are not in dispute are that on 01.1.2011, Jatin (deceased) was going towards Dahiba on his motor cycle Hero Honda Glamour and Shashi Kant, Rohit were pillion riders. Jatin was driving his motorcycle and when they reached near village Bharaf near Boarder, then an indica car bearing registration NO. HR-36-T-2692 being driven by Rajesh in a rash and negligent manner, hit the motorcycle of Jatin and as result of which, Jatin, Shashi Kant and Rohit fell down from the motor cycle on the road and all the three received injuries. Jatin succumbed to his injuries and Shashi Kant and Rohit sustained multiple injuries. They were taken to CHC Kanina. Shashi Kant also succumbed to his injuries in hospital. This accident was witnessed by Harish and by other persons. F.I.R was also registered in this regard.

3. The learned tribunal has admitted the factum of accident and has held that the driver of the Indica car was at fault and was driving in a rash and negligent manner. The tribunal awarded Rs.3,05,000/- each on account of of Jatin (since deceased) and Shashi

Kant (deceased)

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, 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 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.”*

5. Learned counsel for the appellant 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 a 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.

6. In the present case, the compensation is being reassessed as per the judgment titled “*Kishan Gopal's case (supra) and Amandeep's case (supra)*”, which reads as under:-

JATIN

Sr. No.	Heads	Calculations
(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 on account of transportation	Rs.80,000/-
(v)	Total Compensation awarded	Rs.5,30,000/-
(vi)	Enhanced amount of compensation	Rs.5,30,000-Rs.3,05,000=Rs.2,25,000/-

SHASHI KANT

Sr. No.	Heads	Calculations
(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 on account of transportation	Rs.80,000/-
(v)	Total Compensation awarded	Rs.5,30,000/-
(vi)	Enhanced amount of compensation	Rs.5,30,000-Rs.3,05,000=Rs.2,25,000/-

7. The enhanced amount of compensation of Rs.2,25,000/- each to appellants in both FAO's 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.

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

October 30, 2015

G Arora

(***RITU BAHRI***)
JUDGE