IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 7822 of 2015 (O&M)
Date of decision : November 20, 2015

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Oriental Insurance Company Limited through its
Deputy Manager

...........Appellant

Versus

Pinki and others

..........Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Ashwani Talwar, Advocate for the appellant.

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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

Appellant-Oriental Insurance Company Limited through its Deputy Manager has filed this appeal against the order dated 3.9.2015 passed by the Motor Accident Claims Tribunal, Panchkula in a claim petition filed under Section 166 of the Motor Vehicle Act, whereby the claimants have been awarded a total compensation of Rs.5,60,000/- on account of death of a minor child Anushka in a motor vehicular accident which took place on 8.10.2014.

The present appeal has been filed mainly on the ground that by referring to the judgment of Hon'ble the Supreme Court of India in the case of ***Kishan Gopal and another vs. Lala and***

others 2013(4) RCR (Civil) 276 has taken the notional income of the child as Rs.30,000/- per annum and adopted a multiplier of 17 and thus computed amount of Rs.5,10,000/- and awarded additional Rs.50,000/- towards conventional heads and thus the total amount of compensation of Rs.5,60,000/- was awarded to the claimants.

Counsel for the appellant has referred to a recent judgment of Hon'ble the Supreme Court in the case of ***Reshma Kumari and others Vs. Madan Mohan and another 2013 (2) RCR (Civil) 660***, wherein clause (ii) of para 40, it was observed as under:

> *(II) In cases where the age of the deceased is up to 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.*

However, in the judgment in the case of ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77***, Hon'ble the Supreme Court of India has examined in detail the Second Schedule (Column 6) in cases falling under Section 163-A of the Motor Vehicles Act.

While considering the case of ***Kishan Gopal and another (Supra)*** 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). Reference in this case was made to a judgment in the case of ***<u>Lata Wadhwa and others vs. State of Bihar and others 2001(4) RCR (Civil) 673</u>*** 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:*
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> *.............*
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> *(a) Non-earning persons – Rs.15,000/- p.a." The aforesaid clause of the Second Schedule toSection 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 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[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.*

Following the ratio laid down by Hon'ble the Supreme Court of India in ***Kishan Gopal's case (supra)*** and 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/-, I find no illegality or infirmity in the order passed by the Tribunal. In the case of Kishan Gopal (Supra), the accident took place in the year 1992, whereas in the present case the accident has taken place on 8.10.2014. In view of this matter, the Tribunal has rightly assessed the compensation payable to the claimants.

The Supreme Court in the case of ***Reshma Kumari and others (supra)*** has not examined this aspect in detail but has generally given the guidelines that the compensation should be decided keeping in view the second schedule subject to correction as pointed out in column (6) of the table in ***Sarla Verma's case (supra).*** In view of the above referred judgments and in view of the facts and circumstances of this case, no interference is warranted in the judgment passed by the Tribunal. Hence the same is dismissed.

November 20, 2015 **(RITU BAHRI)**
ritu **JUDGE**