

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

FAO No.4020 of 2008.

Date of Decision: 26.04.2016.

Nisha Gabrial and another

....Appellants.

VERSUS

Mulak Raj and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.S. Sandhu, Advocate for the appellants.

Respondent No.2 exparte vide order dated 19.02.2015.

Mr. Suvir Dewan, Advocate for respondent No.3.

SNEH PRASHAR, J.

The accident, in which Baby Galoria daughter of the appellants lost her life, had taken place on 02.07.2007. She alongwith her mother was coming on foot from Bharat Petrol Pump on Kunjpura Road, Karnal to her residence after drinking water from the petrol pump when at around 5:30/5:45 p.m., on reaching the road, she was hit by a truck bearing registration No.HR-64-0639 (hereinafter referred to as “the offending truck”) which came from the side of I.T.I. Chowk. Baby Galoria sustained multiple serious injuries and died at the spot.

Appellants being parents of deceased Baby Galoria filed a

petition invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") claiming compensation from driver-owner and insurer (respondents No.1 to 3) of the offending truck. They contested the petition raising various objections but after trial learned Tribunal awarded a sum of Rs.1,82,000/- as compensation to the claimants alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization. Respondent No.3-insurance company at the first instance was held liable to pay the compensation and was given liberty to recover the same from the insured-respondent No.2, as per law.

Feeling unsatisfied, the appellants preferred the instant appeal for enhancement of the compensation amount.

The submissions made by Mr. S.S. Sandhu, learned counsel for the appellants and Mr. Suvir Dewan, learned counsel for respondent No.3-insurance company have been heard and record perused.

Learned counsel for the appellants argued that as indicated in the postmortem report, the age of the deceased was four years when she died due to the injuries sustained by her during the accident. According to the Second Schedule of the Act of 1988, the multiplier of '15' was applicable instead of '12' applied by learned Tribunal. The amount awarded towards expenditure on last rites is also on the lower side and nothing was awarded for loss of love and affection to the parents of the deceased. To support his arguments, learned counsel relied upon **Kishan Gopal and another vs. Lala and others, 2013(4) R.C.R. (Civil) 276.**

Learned counsel for respondent No.3-insurance company

controverted the arguments of learned counsel for the appellants and submitted that the claim petition was filed by the appellants under Section 163-A of the Act of 1988. Under the said provision the compensation is to be awarded strictly as per the Second Schedule of the said Act. The award passed is in consonance with the provision and needs no modification.

Undisputedly, Baby Galoria (deceased) died due to the injuries suffered by her in a motor vehicular accident arising out of use of the offending truck being driven by Mulak Raj-respondent No.1. However, the facts of the instant case are distinguishable from the facts of Kishan Gopal and another's case (supra) as the age of deceased Baby Galoria was just four years. The notional income of the deceased was rightly fixed by learned Tribunal as Rs.15,000/- per annum. The deceased being four years old when she died in the accident, the multiplier of '15' is the appropriate multiplier as per the Second Schedule of the Act of 1988 and not '12' as adopted by learned Tribunal. Applying the multiplier, the amount comes to Rs.2,25,000/-. Learned Tribunal allowed the amount of Rs.2000/- on account of expenditure incurred on last rites of the deceased but no amount was given for loss of estate. Rs.2500/- for loss of estate shall be payable in addition to the compensation outlined above. In that manner, the total amount of compensation payable to the appellants-claimants comes to Rs.2,29,500/- which is payable by respondent No.3. However, the recovery rights given to respondent No.3-insurance company shall remain the same.

Accordingly, the appeal filed by Nisha Gabriel and another is partly allowed and the award dated 05.06.2008 passed by learned Tribunal

is modified. The enhanced compensation of Rs.47,500/- shall be deposited by respondent No.3 within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing the appeal till realization. The amount of compensation will be disbursed to the appellants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

26.04.2016.
jitender