IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 502 of 2007 (O&M)
Date of Decision : 05.08.2016

Nasib Kaur and another ....Appellants

Versus

R.N. Rai and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. S.K. Mahajan, Advocate
for respondents no. 2 and 3..

Surinder Gupta, J.

Claimants have filed appeal seeking enhancement of compensation as awarded by Motor Accident Claimants Tribunal, Bathinda (later referred to as 'the Tribunal') for death of Sukhbir Singh (later referred to as 'the deceased') son of claimants-appellants in a motor vehicle accident with Military Truck No. 14594672/F (later referred to as 'the offending vehicle').

2. As claimants-appellants are seeking enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal allowed compensation of ₹1,80,000/- to claimants which was computed as follows:-

Sr.No.	***Heads***	***Calculation***
(i)	Name of the deceased	Sukhbir Singh
(ii)	Age of the deceased	13 years
(iii)	Income of the deceased	₹1500 per month

(iv)	1/3rd of (iii) deducted towards personal expenses	(₹1500-₹500)= ₹1000
(v)	Amount of dependency after applying the multiplier of 15	(₹1000x12x15)= 180000
Total		**₹180000**

4. Learned counsel for appellants has argued that the Tribunal has committed grave error while computing amount of compensation. As per 2nd Schedule of the Motor Vehicles Act (later referred to as 'the Act'), income of an unemployed person is to be assessed as ₹15000/- per annum. This schedule pertains to the year 1994 and even if income of deceased is assessed as ₹1500/- per month, by applying the multiplier of 15, amount of dependency works out to ₹2,70,000/- as no deduction towards personal expenses could be made from this notional income. In view of observation of Apex Court in ***Kishan Gopal and another* vs. *Lala and others*, 2014 (1) SCC 244,** notional income of the deceased could be taken as ₹30,000/- and on applying the multiplier of 15, the claimants are entitled to compensation of ₹4,50,000/-.

5. Learned counsel for respondents no. 2 and 3 has argued that it was a petition under Section 163-A of the Motor Vehicles Act and claimants are governed by parameters prescribed in 2nd Schedule under Section 163-A of the Motor Vehicles Act. While referring to observation in case of ***Puttamma and others* vs. *K.L. Narayana Reddy and another*, 2013 (15) SCC 45**, learned counsel has argued that Hon'ble Apex Court has recommended Central Government to amend 2nd Schedule and observed that till the amendment of that Schedule, compensation for the person more than 5 years of age shall be allowed at the fixed rate of ₹1,50,000/- or amount that may be determined in terms of 2nd Schedule, whichever is higher. Tribunal

has taken income of the deceased as ₹1500/- per month, which is more than ₹15000/- prescribed in 2nd Schedule and after making deduction towards personal expenses, it has rightly allowed compensation of ₹1,80,000/- in view of facts and circumstances of the case which call for no further enhancement.

6. Claim petition was filed under Section 163-A of the Act and 2nd Schedule under Section 163-A of the Act guides parameters for grant of compensation. It provides that notional income of an unemployed person be assessed as ₹15,000/- per annum. In ***Puttamma's case (supra)***, Apex Court felt that 2nd Schedule calls for amendment by the Central Government. The matter had also came up for consideration before Apex Court in ***Kishan Gopal's case (supra)*** and it was observed in para 18 as follows:-

> *"18. ………………….Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos.1 & 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10 years old son. 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 ₹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. vs. State of Bihar & Ors., 2001 (4) R.C.R. (Civil) 673; 2001 (8) SCC 197****, 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 ₹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 ₹25,000/- was awarded. Thus, a total sum of ₹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 ₹1.5 lakhs to which under the conventional heads a sum of ₹50,000/- should be added and thus total amount in each case would be ₹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 ₹12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be ₹24,000/- p.a. In our considered view, the aforesaid legal principle laid down in **Lata Wadhwa's case** with all force 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 ₹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/- 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 vs. Delhi Transport Corporation, 2009 (3) R.C.R. (Civil) 77; 2009 (3) Recent Apex Judgments (R.A.J.) 373; 2009 (6) SCC 121,*** *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 vs. 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 ₹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 vs. Association of Victims of Uphaar Tragedy, 2012 (3) R.C.R. (Civil) 203; 2012 (3) Recent Apex Judgments (R.A.J.) 92; 2011 (14) SCC 481****, 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."*

7. Applying the ratio of judgments in aforesaid cases, where notional income of the deceased was assessed as ₹30,000/- per annum, I find no reason not to apply the same parameters to facts of the present case where appellants have lost their child, aged 13 years. As only notional income and not the actual income of the deceased is being assessed, no deduction is required to be made towards his personal expenses.

8. In view of above, compensation awarded by the tribunal is modified by assessing income of the deceased as ₹30,000/- per annum and by applying the multiplier of 15, amount of compensation to which appellants are entitled is worked out as ₹4,50,000/- (₹30,000x15). Claimants are also awarded compensation of ₹50,000/- for loss of love and affection and ₹10,000/- towards funeral expenses of the deceased.

9. As a sequel of my above discussion, this appeal has merit and is accepted. The amount of compensation awarded to claimants is enhanced from ₹1,80,000/- to ₹5,10,000/-. Claimants are also entitled to interest @ 7.5% on the enhanced amount of compensation from the date of filing of claim petition till actual realization.

August 05, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No