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

**FAO No. 1521 of 2014**
**Date of Decision: 04.07.2016**

**Mahender and another**

**......Appellants**

**Vs.**

**Sachin Chopra and another**

**.........Respondents**

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. Ram Pal Verma, Advocate,
for the appellants.

None for the respondents.

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**AMOL RATTAN SINGH, J. (ORAL)**

This is an appeal by the claimants before the learned Motor Accidents Claims Tribunal, Sonipat, seeking enhancement of the compensation of Rs. 2,96,330/- awarded to them by the Tribunal, on account of the unfortunate death of their daughter in a motor vehicle accident that occurred on 18.07.2009.

2. The facts, as taken from the award of the learned Tribunal, are that the deceased, Sakshi alias Pinki, is stated to have been, along with her father (appellant No. 1), going home from the Kali Mata temple situated along the G.T. Road at Village Barhi. When they were crossing the G.T. road, a car bearing registration No. HR-02-P-4570, driven by respondent No. 1, allegedly in a rash and negligent manner, came and struck against Sakshi alias Pinki, due to which she sustained injuries and

became unconscious. She was shifted to the Bhatia Hospital, Ganaur for treatment, from there she was referred to Jaipur Golden Hospital, Delhi, but unfortunately succumbed to her injuries on 24.07.2009.

An FIR was lodged on the statement of appellant No. 1 on 19.07.2009, against respondent No. 1, at Police Station, Gohana.

The deceased is stated to have been 12 years old at the time of the accident.

A sum of Rs. 2,00,000/- is stated to have been incurred on her treatment, transportation, special diet and last rites.

Hence, for the aforesaid expenses and on account of the mental agony, pain and suffering that the appellants went through on account of the accident of their daughter, and her subsequent death, they claimed compensation of Rs. 20,00,000/-, in the claim petition filed on 17.01.2013.

3. Upon notice issued to them, respondents No. 1 and 2, i.e. driver and owner of the aforesaid car, appeared and filed a joint written statement denying that the accident took place due to the rash and negligent driving of respondent No. 1 and further stated that actually it took place due to the negligence of the deceased herself, who was crossing the G.T. road without caring for the traffic rules and the intensity of the traffic. As such, even the FIR that was registered against respondent No. 1, was in collusion with the police.

Respondent No. 3, i.e. the insurance company with which the aforesaid vehicle was insured, filed a separate written statement taking the usual preliminary objections, including that respondent No. 1 was not holding a valid and effective driving license.

On merits, again it was contended that the accident occurred due to the fault of the deceased herself and not on account of any rash and negligent driving by respondent No. 1.

5. From the pleadings of the parties, the Tribunal framed issues as to whether the accident occurred due to the rash and negligent driving of respondent No. 1 and if so, whether the claimants are entitled to any compensation and from whom.

An issue with regard to whether the vehicle was being plied in contravention of the terms and conditions of the insurance policy was also framed.

6. The claimants examined three witnesses including appellant No. 1, who testified in terms of the claim petition. PW-1, Brij Mohan, a Criminal Ahlmad in the Court of the Sub Divisional Judicial Magistrate, Ganaur, testified with regard to the pendency of a criminal case against respondent No. 1 and the fact that the charge had been framed against him, as also various documents as were on record in the criminal case.

PW-2 was one D.K. Chhabra, employed as a record officer at the Jaipur Golden Hospital, Delhi, who testified that the deceased was admitted in the hospital on 18.07.2009 and had died during treatment on 24.07.2009. He further testified that the hospital had charged Rs. 62,329/- for the treatment and proved the bill, Ex. P-9.

The respondents, on the other hand, did not lead any evidence to rebut the claim of the petition.

7. On appraising the aforesaid evidence, the learned Tribunal came to the conclusion that the accident, as a result of which the deceased died, had occurred on account of the negligence and rash driving of respondent No. 1.

8. Even though the deceased is stated to have been crossing the G.T. road, which is obviously an extremely busy national highway, no appeal by the respondents against that finding has been brought to the notice of this Court. Consequently, it is only the issue of adequacy/inadequacy of the compensation awarded by the Tribunal, that is to be considered by this Court.

9. As regards compensation, the Tribunal, while citing the case of **Lata Wadhwa and others** vs. **State of Bihar and others, II** 2001 (8) SCC 197 and **R.K. Malik and another** vs. **Kiran Pal and others** 2009 (3) RCR (Civil) 403, took into consideration not the fact that the deceased was 12 years old, but the age of her parents, i.e. the present appellants-claimants, and assessing the notional income of the deceased to be Rs. 24,000/- per annum, after applying a cut of 1/3rd thereto, (towards the personal expenses of the deceased had she continued to live), applied a multiplier of 14 to the remaining amount and calculated the compensation under the head of loss

of income to be Rs. 2,24,000/- (Rs. 16,000 x 14).

The claimants were also awarded Rs. 10,000/- towards transportation and funeral expenses of the deceased and a sum of Rs. 62,330/- by way of reimbursement of expenses incurred of the treatment of the deceased.

Thus, a total compensation of Rs. 2,96,330/- was awarded by the Tribunal.

An interest @ 7.5 per cent per annum, running from the date of institution of the petition till the realization of the amount, was also awarded on the compensation amount of Rs. 2,96,330/-

10. Finding the driving license of respondent No. 1 to be perfectly valid, liability to pay the compensation was eventually held to be that of respondent No. 3, though naturally, all three respondents were otherwise held jointly and severally liable to pay the amount.

11. Today, before this Court, though Learned counsel for the appellants had appeared in the forenoon session, but thereafter, has not appeared and consequently, the grounds of appeal are being considered with regard to the arguments raised on behalf of the appellants.

It is further seen that as regards respondents No. 1 and 2, i.e. the driver and owner respectively of the 'offending vehicle', counsel appeared for them on 31.10.2014 but had not appeared thereafter. Respondent No. 3, i.e. the insurance company eventually held liable to pay compensation, was served with the notice issued but chose not to appear and consequently, was proceeded against *ex parte,* vide order dated 31.10.2014.

12. A perusal of the grounds of appeal shows that the appellants have essentially contended that no compensation towards loss of consortium and loss of love and affection of their daughter has been awarded by the Tribunal and that the compensation awarded towards the pain and suffering they went through on account of losing her, as also for funeral expenses and transportation, is also highly inadequate.

13. Having considered the above, the contention with regard to compensation for loss of consortium is obviously wholly misconceived and has been given in the grounds of appeal without any application of mind, because the deceased being a child 12 years of age, and the appellants being her parents, the question of compensation under that head, very obviously, does not even arise.

However, as regards loss of love and affection, the appellants, being the parents of a 12 year old deceased child, obviously need to be compensated under that head, together with the pain and suffering which they naturally went through, on losing their child in the accident. Though no monetary compensation can actually compensate for that loss, however, a sum of Rs. 1,00,000/- is awarded towards pain and suffering and loss of love and affection of their child, to the appellants.

14. The reimbursement of medical expenses having been awarded by the Tribunal as per the bills produced, requires no

further enhancement and is kept intact.

Towards funeral expenses and last rites of the deceased, as per the judgment of **Rajesh and others vs. Rajbir Singh and others,** (2013) 9 SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013) 7 SCC 47, consistently followed thereafter, Rs. 25,000 is payable to the claimants under the said head and the said amount is consequently awarded, which is Rs. 15,000/- over and above what was awarded by the Tribunal, (with the Tribunal taking such compensation jointly with compensation towards transportation charges).

Thus, with Rs. 25,000/- being awardable only towards the last rites and funeral expenses of the deceased , transportation charges are separately awarded to the extent of Rs. 5,000/-, considering that she was first taken to a hospital in Ganaur and then to Delhi.

15. Coming last to the issue of the adequacy/inadequacy of compensation awarded by way of loss of notional income to the claimants of a deceased child.

The Tribunal while referring to the judgments in **Lata Wadhwa** and **R.K. Maliks'** cases (supra), assessed the income of the deceased child, aged 12 years, to be Rs.24,000/- per annum.

It must be noticed here that Lata Wadhwa was a case where members of the families of employees of the Tata Iron and Steel Company (TISCO), Jamsedhpur, unfortunately lost their lives, in a fire that took place during a function in the factory premises.

Hence, their Lordships after considering various factors, directed that in the case of children who were between 5 to 10 years of age, their contribution should be taken to be Rs.24,000/- per annum and a multiplier of '15' be applied thereto.

In R.K. Maliks' case, since the accident in question had taken place in the year 1997 and the $2^{nd}$ Schedule to the Motor Vehicles Act, 1988, had been notified w.e.f. 14.11.1994, the notional income as stipulated in Clause 6 of the said Schedule, for non-earning persons, i.e. Rs.15,000/- per annum, was assessed as the income of the deceased child.

In the present case, the accident took place on 18.07.2009, i.e. about 4 months short of 15 years after the $2^{nd}$ Schedule had been inserted in the Act of 1988. Hence, though the Tribunal actually followed Lata Wadhawas' case and not R.K. Maliks' case (though erroneously stated so), however, in view of the fact that the accident in question took place in 2009, I see no error in the Tribunal having assessed the notional income of the deceased, aged 12 years, to be Rs.24,000/- per month.

16. It may be said here that undoubtedly, even as per the minimum wages notified by the Haryana Government w.e.f. 01.07.2009, the wage for an unskilled labourer is seen to be Rs.3914/- per month or Rs.46,968/- per annum, i.e. almost double the amount that the Tribunal had assessed.

However, since the deceased was a child and at least for about the next 6 years or so she would have continued to be under the age of majority, possibly her notional income cannot be taken to be more than Rs.2,000/- per month, or Rs.24,000/- per annum.

If one would carry the logic forward, possibly or, in fact probably, the girl would have been married off by her parents, looking at their social status, between the age of 18 to 22/23 years and thus, thereafter, they would have obviously no dependency upon her. On the other hand, of course, it is equally possible that the child may have done brilliantly in her academics and gone out to acquire some professional degree, due to which she may have supported her parents, till a later age of marriage and possibly even thereafter. However, those are imponderables which cannot be answered, being matters of a future which is not going to happen, in the case of a deceased child.

17. Therefore, it is to be accepted that the childs' notional income was Rs.24,000/- per annum. Then the next question is as to what should be the multiplier to be applied, to calculate the loss of dependent income to the claimants, after deducting a 1/3rd amount from Rs.24,000/- towards the personal expenses of the deceased child.

One method of course would be, that since the child was below the age of 18 years and the maximum multiplier prescribed in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another,** (2009) 6 SCC 121, is

'18', when a victim in a motor vehicle accident case was 15 to 25 years of age, the said multiplier be applied to this case also.

However, since the child was actually not earning and it is only her notional income which has been assessed, it would be difficult to hold that she would continue to remain with her parents for the next 18 years, i.e. till she reached the age of 30 years. As such, the Tribunal having applied a multiplier of '14', keeping the age group of the claimants (appellants herein) in view, i.e. 41-45 years, I do not see any irrationality in that method being adopted.

Again, it must be said here that though it would actually amount to gender inequality to do so, however, following as a general rule (exceptions apart) that girls unless well educated, tend to get married between the age of 18-25 years, and go to their matrimonial homes; whereas boys (again as a general principle only), do contribute to their parents' income if necessary, and for a longer period of time, especially when parents become old.

Hence, in the case of a deceased boy, it would possibly be correct to apply a multiplier of '18', however, the same rationale may not apply in the case of a deceased girl child .

Hence, the method and calculation adopted by the Tribunal in assessing the deceased childs' income to be Rs.24,000/- per annum, and thereafter deducting 1/3rd of that amount towards her personal expenses and to the remaining amount of Rs.16,000/- applying a multiplier of '14' in terms of the age of the claimants, is upheld.

Therefore, the amount of Rs.2,24,000/- awarded under the head of loss of income to the claimants (present appellants) by the Tribunal, is upheld.

18. To conclude, by this judgment, this Court has now awarded compensation to the appellants as follows:-

| | | |
|---|---|---|
| 1) | Towards loss of income (as awarded by the Tribunal) | : Rs.2,24,000/- |
| 2) | Towards loss of love & affection | : Rs.1,00,000/- |
| 3) | Towards funeral expenses and last rites | :Rs.25,000/- |
| 4) | Towards transportation expenses | :Rs.5,000/- |
| | Total: | Rs.3,54,000/- |

Thus, the compensation now awarded by this Court is Rs.57,670/- more than what was awarded by the Tribunal. The aforesaid amount shall also carry an interest @ 9 % per annum, running from the date of filing of the claim petition, till the date of realization thereof.

Interest has been awarded to the claimants @ 9% per annum, on the enhanced compensation, the accident being of the year 2009 and not an old accident of 1990s, in which case normally interest @ 6.5 to 7.5 per cent per annum, is awarded.

The appeal is partly allowed to the above extent, with no order as to costs.

**(AMOL RATTAN SINGH)**
**JUDGE**

July 04, 2016
nitin/vcgarg