

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

FAO No.3243 of 2013 (O&M)

Date of decision : 22.08.2016

Resham Singh and another

.....Appellants

Versus

Paramjit Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Dheeraj Narula, Advocate for appellants.

Mr. M.K. Garg, Advocate for respondent-Insurance Company.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 22.08.2012, passed by the learned Motor Accidents Claims Tribunal, Sirsa (hereinafter called the “Tribunal”), vide which the appellants-claimants have been awarded compensation to the tune of Rs.3,10,000/- on account of death of their son Gursewak Singh in the motor vehicular accident, which took place on 30.06.2011.

2. The present appeal has been preferred by the appellants-claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and gone through the paper-book carefully.

4. Learned counsel for the appellants-claimants contended that

the compensation awarded by the learned Tribunal is inadequate. Deceased Gursewak Singh was the only son of the claimants. He was student of 9th standard and was 16 years of age. The claimants were entitled to compensation at least to the tune of Rs.5,00,000/-. To support his contentions he relied upon case ***Kamla and another Vs. Inder Pal and others*** **FAO No.3628 of 2012 decided on 12.05.2014** by the Coordinate Bench of this Court.

5. On the other hand, Mr. M.K. Garg, Advocate, learned counsel for the respondent-Insurance Company contended that the deceased was only a student of 9th class. The present petition has been filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter called the “Act”), and compensation was to be computed as per the structured formula under the Second Schedule of the Act, which has been rightly done in this case. Thus, he contended that there is no scope of any further enhancement in the amount of compensation.

6. I have duly considered the aforesaid contentions.

7. It is not disputed that deceased Gursewak Singh was the only son of claimants. He was 16 years of age at the time of accidental death. He was student of 9th standard. He also used to help the claimants. The Hon’ble Apex Court in case ***Kishan Gopal and another Vs. Lala and others*** **2013(4) RCR (Civil) 276** has laid down as under:-

“18. Point Nos.2 and 3 are answered together in favour of the appellants for the following reasons:-

The Tribunal having answered the contentious issue No.1,

against the appellants in its judgment the same is concurred with by the High Court by assigning erroneous reasons and it has affirmed dismissal of the claim petition of the appellants holding that the accident did not take place on account of the rash and negligent driving of the offending vehicle by the first respondent and therefore the contentious issue Nos.1 and 2 are answered in the negative against the appellants and it has not awarded compensation in favour of the appellants. 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 year 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 – 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.**, while examining the tortious 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 (2009) 6 SCC 121**, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ 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.”

8. The aforesaid authoritative pronouncement of the Hon’ble Apex Court has also been relied upon in case **Kamla and another Vs. Indper Pal and others** (supra). In that case also the claim petition was filed under Section 163-A of the Act.

9. Thus, keeping in view the law laid down by the Hon’ble Apex Court in case **Kishan Gopal and another Vs. Lala and others** (supra) and this Court in case **Kamla and another Vs. Indper Pal and others** (supra) the compensation awarded to the claimants deserves to be enhanced from Rs.3,10,000/- to Rs.5,00,000/- ($4,50,000 + 50,000$ under conventional heads).

10. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellants-claimants is enhanced to Rs.5,00,000/- from Rs.3,10,000/- as awarded by the Tribunal. The appellant-claimant shall also be entitled to

interest on the enhanced amount from the date of filing the petition till realisation at the rate as determined by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

22.08.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No