

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

FAO No.5094 of 2014

Date of decision : 10.11.2016

Reshma and another

.....Appellants

Versus

Amarjeet Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vivek Suri, Advocate for appellants.

Mr. D. D. Sharma, Advocate for respondent No.2.

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

DARSHAN SINGH, J.

The present appeal has been preferred by by the appellants-claimants against the award dated 14.10.2013, passed by learned Motor Accidents Claims Tribunal, Panchkula (hereinafter called the “Tribunal”) in a petition filed under Section 163-A of the Motor Vehicles Act, 1988 (for short the “Act”), vide which the appellants-claimants have been awarded compensation to the tune of Rs.75,000/- on account of death of their son Karan in the motor vehicular accident, which took place on 02.05.2012.

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

3. I have heard learned counsel for the parties and have gone through the record of the case carefully.

4. Initiating the arguments, learned counsel for the appellants-

claimants contended that the appellants have lost their son master Karan aged about four years in the present accident but the learned Tribunal has only awarded a sum of Rs.75,000/- as compensation which is highly inadequate. To support his contentions, he relied upon cases *Shyam Narayan Vs. Kitty Tours Travels & others 2006(1) RCR (Civil) 555, Oriental Insurance Company Ltd. Vs. Om Parkash and others 2009(1) ACC 148* and *National Insurance Company Ltd. Vs. Farzana and others 2010(2) ACC 9*.

5. On the other hand, learned counsel for the respondent-Insurance Company contended that present claim petition has been filed under Section 163-A of the Act and the learned Tribunal has rightly computed the compensation as per the Second Schedule.

6. I have duly considered the aforesaid contentions.

7. There is no dispute to the fact that the appellants-claimants have lost their four years old child in the present accident. This fact cannot be lost sight that no amount of compensation can compensate for the loss of life, nor it can bring back the happiness in the lives of the dependant family members. However, it becomes the duty of the Court to award the just and appropriate compensation to them.

8. No doubt the present claim petition has been filed under Section 163-A of the Act. The age of the deceased child was about four years. Thus, admittedly he was a non-earning person and the notional income of the deceased has to be taken into consideration to compute the compensation. There is also no dispute that in a claim petition filed under

Section 163-A of the Act, the compensation is required to be computed as per the Second Schedule appended to the Act but the said Schedule has remained unamended for long. The Hon'ble Delhi High Court in case ***Oriental Insurance Company Ltd. Vs. Rajwati Devi and others 2008 ACJ 802*** has laid down as under:-

"Second Schedule was appended to the Motor Vehicles Act in the year 1994. Unfortunately, government has not exercised its power provided under clause (3). Thus, Second Schedule remains unamended since the date of its inception till today. I note that from year 1994 today, inflation has gone up by 4 per cent to 6 per cent each year. Keeping in view inflation and the rise in cost of living and the fact that the government has not amended the Second Schedule, I think it appropriate to give benefit of 25 per cent increase in the income even as per the Second schedule."

9. 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 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 (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.”

10. In the aforesaid authoritative pronouncement, the learned Apex Court has discussed the issue with respect to the determination of the notional income by taking into consideration the Second Schedule under Section 163-A of the Act. In the aforesaid case the deceased child was of

10 years of age. The learned Apex Court has determined the notional income of the deceased child to be Rs.30,000/- per month, whereas in the present case, the deceased was four years of age. So, he was below five years. Thus, the notional income of the deceased can safely be taken to be Rs.15,000/- per annum as that will suffice the ends of justice.

11. In case *Shyam Narayan Vs. Kitty Tours Travels & others* (supra) in case of death of five years old child, the Hon'ble Delhi High Court has also taken the notional income of the deceased to be Rs.15,000/- by relying upon the judgment of the Hon'ble Apex Court in case *Manju Devi Vs. Musafir Paswan 2005 ACJ 99*.

12. As per the age of the deceased, the multiplier of 15 shall be applicable. The multiplicand comes to Rs.2,25,000/-. In the present case, the deceased was a male child of four years. Certainly, the appellants-claimants being the parents of the deceased child had undergone lot of pain and suffering on account of loss of their child. So, they will be further entitled to Rs.50,000/- on account of pain, suffering and shock. The total amount of compensation payable to the claimants comes to Rs.2,75,000/-.

13. 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.2,75,000/- from Rs.75,000/- as awarded by the Tribunal. The appellants-claimants 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.

10.11.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No