

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

**FAO No.8129 of 2014 (O&M)
Date of decision: 06.01.2016**

Rekha Sharma

....Appellant

Versus

Kesar Singh and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vijay Lath, Advocate,
for the appellant.

Mr. Satpal Dhamija, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as 'the Tribunal') vide award dated 09.01.2013, on account of death of her son Lalit Sharma in a motor vehicular accident which took place on 13.12.2011.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 13.12.2011, Lalit Sharma (deceased) along with his friend Kesar Singh had gone to Ropar on a motorcycle bearing registration No. PB-06-T-2011 for purchasing grocery items. When they were returning back, the motorcycle was being driven by Kesar Singh and Lalit Sharma was a pillion rider. When they reached near village Nakkian, in the meantime, a Platina motorcycle bearing registration No. PB-12-M-2423 came from behind and hit into their motorcycle, as a

result of which, Lalit Sharma fell down on the road and sustained serious injuries. Both the occupants of the motorcycle i.e. Kesar Singh and Lalit Sharma were taken to Civil Hospital, Anandpur Sahib. However, Lalit Sharma died on the way to hospital. Lalit Sharma, was stated to be a student of class 10 + 2 and was aged about 18 years. Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that Lalit Sharma died in a motor vehicular accident which arose out of the use of motorcycle bearing registration No. PB-06-T-2011. Ultimately, the claim petition was accepted by the Tribunal and the compensation has been assessed in view of Schedule II of Motor Vehicles Act, 1988, which is to be applied for assessing compensation in a claim petition under Section 163-A of the Act. The deceased was a young boy of 18 years of age. As per certificate of Senior Secondary Examination, deceased-Lalit Sharma had appeared in Class 12th examination in March, 2012. Schedule II of the Motor Vehicle Act provides for a structured formula for assessing the compensation in terms of Section 163-A of the Act. The notional income of the deceased, as per Clause 6 of Schedule II, was assessed as Rs.15,000/- per annum. The total compensation was assessed as Rs.3,00,000/-, out of which 1/3rd was deducted as per the statutory deduction provided in the said Schedule. Accordingly, the compensation was scaled down to Rs.2,00,000/-. In addition to it, Rs.5,000/- were awarded on account of funeral expenses. Hence, the claimant was found entitled to total compensation of Rs.2,05,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization.

The two wheeler in question was comprehensively insured. As per document Ex.R-3, the said vehicle was issued as “package policy.” In view of the judgment passed by the Delhi High Court in **Yashpal Luthra Vs. United India Insurance Co.,** 2011 ACJ (Delhi) 1415, which was approved by the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Balakrishnan,** Civil Appeal No.8163 of 2012 (decided on 20.11.2012), respondent No.2-Insurance Company was held liable under the contractual obligation to indemnify the insured since it was a “package policy.”

Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal.

REASSESSED COMPENSATION

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

Learned counsel for the appellant has referred to the judgment delivered by the Hon'ble Supreme Court in **Kishan Gopal and another Vs. Lala and others,** 2013 ACJ 2594, to contend that income of a deceased child should have been taken as Rs.30,000/- per annum. In that case, the Hon'ble Supreme Court had referred to the structured formula laid down in IIInd Schedule of the Act and observed that the notional income of Rs.15,000/- per annum, which was fixed in the year 1994, over a period of times required to be reassessed. Hence, Rs.30,000/- per annum were assessed as notional of the child, who had died in a road accident. This judgment, however, cannot be made applicable to the case in hand. Before the Hon'ble Supreme Court, the claim was considered in a claim petition

filed under Section 166 of the Motor Vehicle Act, whereas in the present case, the claim has been made under Section 163-A of the Act.

At this stage, reference can be made to the judgment delivered by the Hon'ble Supreme Court in **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443. In that case, the Hon'ble Supreme Court was considering the provisions of Second Schedule, which is to be read in terms of Section 163-A of the Act for computation of compensation. It was held that the Second Schedule, which was enacted in 1994, had become redundant, irrational and unworkable, due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy. It was further held that till the amendment in Second Schedule, as proposed, is made by the Parliament/Central Government, for children upto the age of 5 years, a compensation of Rs.1,00,000/- and for persons more than 5 years of age, compensation of Rs.1,50,000/- should be determined. The Hon'ble Supreme Court has further observed as under:-

“56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A (3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs.1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is

higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988.”

The Hon'ble Supreme Court while recommending amendment in the Second Schedule, had not deviated from calculation of compensation as per structured formula. In the present case, on account of death of 18 years old child, the compensation has been assessed as Rs.2,05,000/-, which is in accordance with the recommendations made by the Hon'ble Supreme Court in para No.56 of the aforesaid judgment.

At this stage, reference can be made to a decision of the Hon'ble Supreme Court in **R.K. Malik & another Vs. Kiran Pal & others**, 2009 (5) SCC (Civil) 265. In this case, while affirming grant of compensation under the structured formula in terms of Section 163-A of the Act, the Hon'ble Supreme Court had granted Rs.75,000/- towards non-pecuniary damages, which includes pain and sufferings, loss of amenity and enjoyment of life and funeral expenses. While upholding the judgment of Delhi High Court, the Hon'ble Supreme Court has observed that enhanced compensation in the above said category, did not suffer from any infirmity.

In the present case, even though the compensation has been rightly assessed, but keeping in view the decision of the Hon'ble Supreme Court in **R.K. Malik's** case (supra), the compensation is being reassessed as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Compensation as per Second Schedule	Rs.3,00,000/-
(ii)	1/3 rd of (i) above is deducted as per statutory deduction provided in Second Schedule of the Act.	Rs.3,00,000 - Rs.1,00,000 = Rs.2,00,000/-
(iii)	Compensation under over head , which includes, pain and suffering, loss of amenity, funeral expenses etc.	Rs.75,000/-

(iv)	TOTAL COMPENSATION AWARDED	Rs.2,75,000/-
(x)	Enhanced amount of compensation	Rs.2,75,000 – 2,05,000 = Rs.70,000/-

The enhanced amount of compensation of **Rs.70,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

06.01.2016
ajp