

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

FAO No.3921 of 2002

Date of decision : 16.02.2016

Sajan and another

.....Appellants

Versus

The Oriental Insurance Company Ltd. and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Neeraj Khanna, Advocate for appellants.

Ms. Vandana Malhotra, Advocate for respondent No.1.

None for respondents No.2 & 3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 17.04.2002, passed by learned Motor Accidents Claims Tribunal, Chandigarh (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 ₹60,000/- on account of death of their daughter in the motor vehicular accident, which took place on 30.05.1998.

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

3. Respondents No.2 & 3 were represented by Mr. Munish

Joshi, Advocate. As per the report of the office, the notice sent to Mr.Munish Joshi Advocate was received back duly served through his clerk but none has appeared for respondents No.2 & 3. So, they stands proceeded against *ex parte*.

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

5. Initiating the arguments, learned counsel for the appellants-claimants contended that in the present accident the appellants-claimants lost their daughter aged 02 months and 11 days. The learned Tribunal has awarded only ₹60,000/- as compensation which is highly inadequate. No amount has been awarded to the claimants towards loss of love and affection of their female child.

6. On the other hand, Ms. Vandana Malhotra, Advocate, learned counsel for respondent-Insurance Company contended that the present claim petition has been preferred by the claimants under Section 163-A of the Act. The age of the deceased female child was only 02 months and 11 days. Keeping in view the age of the deceased child, the compensation granted by the learned Tribunal is just and adequate.

7. I have duly considered the aforesaid contentions.

8. There is no dispute that the appellants-claimants have lost their 02 months and 11 days old daughter in the present accident. No monetary compensation can compensate the loss of the child, but it becomes the duty of the Court to award the just and appropriate compensation to the parents.

9. The present claim petition has been filed under Section 163-A of the Act. The age of the deceased female child was about 02 months and 11 days. Admittedly, she was a non-earning person. So, the notional income of the deceased has to be taken into consideration to compute the compensation. Needless to say 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. In case *Shyam Narayan Vs. Kitty Tours Travels & others 2006(1) RCR (Civil) 555*, the Hon'ble Delhi High Court has taken the notional income of five years old child as ₹15,000/- by relying upon the judgment of the Hon'ble Apex Court in case *Manju Devi Vs. Musafir Paswan 2005 ACJ 99*. In the instant case, as the age of the deceased female child was only 02 months and 11 days, so the notional income of the deceased child can be taken to be ₹10,000/- per annum. As per the age of the deceased, the multiplier of 15 shall be applicable. The multiplicand comes to ₹1,50,000/-.

10. In the present case, the deceased was a female child of 02 months 11 days. Certainly, the appellants-claimants being the parents of the deceased female child had undergone lot of mental agony and shock on account of loss of their child. So, they will be further entitled to ₹.50,000/- on account of pain, mental agony and shock. The total amount of compensation payable to the claimants comes to ₹2,00,000/-.

11. 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 ₹2,00,000/- from ₹60,000/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest at the rate of 6% per annum on the enhanced amount of compensation from the date of filing the petition till realisation.

12. The liability to pay the enhanced amount of compensation and the apportionment amongst the claimants shall remain the same as determined by the learned Tribunal in the main award.

16.02.2017

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No