

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

FAO-3139-2005

Date of decision: 04.09.2017

Brij Lal and another

.... Appellants

Versus

Vinod Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Akshay Kumar Goel, Advocate
for the appellants.

Mr.Mohit, Advocate for
Mr.R.A.Sheoran, Advocate
for the respondents.

Avneesh Jhingan, J.

The present appeal is against the award dated 24.03.2005 passed by the Motor Accidents Claims Tribunal, Bhiwani (hereinafter to be referred as the "Tribunal) claiming for enhancement of the compensation of Rs.70,000/- awarded by the Tribunal for the death of 12 years old child.

This case was a burnt case and the record has been reconstructed from the salvaged record and the copies supplied by the counsel subject to just exception.

The facts relevant for the adjudication of the present appeal are noted that the claim petition was filed by the ill-fated parents who lost their 12 years son in an accident which occurred on 02.07.2003. The tractor bearing registration No.HR-21-4406 was driven by Vinod Kumar in a rash and

negligent manner dashed against Vikas. The child suffered injuries and was taken to General Hospital, Bhiwani where he was declared dead. It may be noted that the driver of the tractor sped away from the spot after the accident. An FIR No.259 was also got registered in Police Station, City, Bhiwani.

The Tribunal after considering the evidence and the witness, awarded a sum of Rs.70,000/- along with @ 9% per annum from the date of presentation of the petition till realisation of the amount. The said amount was given on account of loss of love and affection.

I have heard the learned counsel for the parties and have perused the paper book with their able assistance.

The counsel for the appellant argued that the Tribunal erred in not awarding any compensation on the ground that the child was only 12 years old and was not earning. A sum of Rs.70,000/- has been awarded for loss of love and affection only. The counsel relies upon the decision of the Apex Court in **Kishan Gopal and others vs. Lala and others, 2013(4) RCR (Civil), 276.**

Learned counsel for the respondents (driver and the owner) argued that the deceased was only a child and was not earning, therefore, there was no question of awarding any compensation. It is contended that the Tribunal rightly awarded Rs.70,000/- for loss of love and affection.

The claim was filed under Section 166 of the Motor Vehicles Act, 1988 claiming a sum of Rs.10 lakhs. The deceased was 12 years old. According to the claimant, he was attending the school and thereafter helping his father in a tea stall. As per the grounds, it is claimed his assistance in the

father's shop should have been assessed at Rs.12,000/- per month. I am in agreement with the learned counsel for the appellant to the extent that a sum of Rs.70,000/- awarded by the Tribunal under the head of love and affection is on the lower side.

The Hon'ble Apex Court in case of *Kishan Gopal's case (supra)* has held 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. 2001(4) R.C.R. (Civil) 673 : (2001)8 SCC 197**, 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 irrecompable 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 been 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(3) R.C.R. (Civil) 77 : 2009(3) Recent Apex Judgments (R.A.J.) 373 : 2009(6) SCC 121*, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 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.

A perusal of the above said decision to show that the Hon'ble Apex Court held that in case of the death of a child in order to arrive at just and equitable compensation, the IInd Schedule of Section 163-A of the Motor Vehicles Act, 1988 can be referred to.

In the present case, the appellant himself has claimed the assistance of the deceased child Rs.12,000/- per annum. But the Hon'ble Apex Court in case of **Nagappa vs. Gurdayal Singh and ors., 2003(2) SCC 274** observed as under :-

“Firstly, under the provisions of Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal/court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award.”

In the above decision, the Hon'ble Apex Court has held that the Tribunal has to given at just and equitable compensation and not to restricting only to the claim made in petition. Therefore, as per Schedule II of the Act, the income is taken as Rs.15,000/- per annum.

The age of the mother at the time of filing the claim petition was 40 years and father was aged 47 years. But without going into the age of the mother and the father and as per the decision of Hon'ble Apex Court in

Reshma Kumari and others Vs. Madan Mohan and another, 2013(2) RCR**(Civil) 660** in which it was held :

“(ii) In cases where the age of the deceased is upto 15 years, irrespective of the Section 166 or Section 163A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the table in Sarla Verma should be followed.”

the multiplier of 15 is applied. The compensation is calculated as Rs.15,000x15=Rs.2,25,000/-

Apart from the compensation calculated above, the amount of Rs.70,000/-awarded by the Tribunal under the head of love and affection. Rs.25,000/- is awarded for funeral and last rites expenses.

The award dated 24.03.2005 is modified to the extent that the amount is enhanced from Rs.70,000/- to Rs.3,20,000/-. The appellant shall be entitled to interest @ 6% per annum.

The appeal is partly allowed.

(AVNEESH JHINGAN)
JUDGE

04.09.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes