

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 103 of 2012 (O&M)

Date of Decision: 4.10.2017.

Pinki Rani and another

.....Appellants

Versus

Jaswinder @ Kala and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ravindra Jain, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 8.9.2011 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (for short 'the Tribunal').

The brief facts necessary for adjudication of the present appeal are as under:

On 17.8.2010 Nitin aged 6 years old boy was struck by rashly and negligently driven motor cycle bearing registration No. HR02-L- 2041 (for short 'the offending vehicle'). As a result of the accident, the boy suffered multiple grievous injuries and was taken to Sharma Hospital, Jagadhri, from there he was taken to Jindal hospital where he remained admitted upto 25.8.2010 and he ultimately succumbed to his injuries. FIR No. 156 dated 17.8.2010 was registered at Police Station Sadar, Yamuna Nagar.

The unfortunate parents who lost their child filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The Tribunal after considering witnesses and evidence

produced, awarded a sum of ₹ 2,89,100/- alongwith interest at the rate of 7.5 % per annum. The said amount awarded included ₹ 1,09,100/- on account of medical expenses.

Aggrieved of the said order, the present appeal has been filed by the claimants for enhancement of compensation.

I have heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants argued that the Tribunal has only awarded a lump sum amount of ₹ 1,80,000/- for the death of 6 years old child. He further argued that no amount was awarded for loss of love and affection and for funeral expenses.

Learned counsel for the respondent No.3 defended the award and opposed the enhancement of compensation.

The contention of learned counsel for the appellants deserves acceptance in view of the law laid down by Hon'ble the Apex Court in case of **Kishan Gopal and another Versus Lala and others** 2014 (1) SCC 244, wherein it was 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 person- ₹ 15,000/- p.a.”

In the above decision, Hon'ble the Apex Court has held that in case of death of a child, help can be taken from Second Schedule of the Act and his income can be assessed as non-earning person ₹ 15,000/- per annum.

Hon'ble the Apex Court in **Reshma Kumari and others Versus Madan Mohan and another**, 2013(9) SCC 65 has held as under:

"34. If the multiplier as indicated in Column (4) of the table read with paragraph 42 of the Report in Sarla Verma is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future

prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the table in Sarla Verma for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the table in Sarla Verma is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163A or Section 166 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. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the table in Sarla Verma should be followed."

As per the above decisions, Hon'ble the Apex Court has held that in case of death of a victim upto 15 years, a multiplier of 15 has to be applied.

Keeping in view the above decision, the Tribunal erred in granting a lump-sum amount rather than following the multiplier method.

The amount of compensation is re-assessed as under:

$$15,000 \times 15 = 2,25,000/-$$

In case of death of a child, the parents should have been awarded for loss of love and affection as per the decision of Hon'ble the Apex Court in *Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767*, wherein it has been held that compensation should be awarded for loss of love and affection and for funeral expenses.

In view of the above decision, the parents are awarded a sum of ₹ 1,00,000/- for loss of love and affection and ₹ 20,000/- for funeral expenses, as per table given below.

<i>Sr. No.</i>	<i>Description</i>	<i>Amount earlier awarded by the Tribunal</i>	<i>Amount now awarded</i>
1	Medical expenses	₹ 1,09,100/-	₹ 1,09,100/-
2	Compensation on account of death	₹ 1,80,000/-	₹ 2,25,000/-
3	Loss of love and affection	Not awarded	₹ 1,00,000/-
4	Funeral expenses	Not awarded	₹ 20,000/-

The award dated 8.9.2011 is modified to the extent that an amount of ₹ 2,89,100/- awarded is enhanced to ₹ 4,54,100/-.

The claimants shall be entitled to enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeal is partly allowed in the aforesaid terms.

4.10.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No