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

**FAO No. 4415 of 2013(O&M)
Decided on: 10.08.2017**

Rajinder Kumar and another

...Appellants

versus

Kayum Khan @ Abdul Kayyam and others

...Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Gopal Sharma, Advocate,
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No. 3-Insurance Company.

Rajbir Sehrawat, J. (Oral)

1. This is an appeal filed by the claimants for enhancement of the award passed by the Motor Accident Claims Tribunal, Rewari whereby the claimants were awarded an amount of ₹3,39,000/- on account of death of their son in the accident in question.
2. The facts of the case as pleaded in the claim petition are that on 20.12.2010, deceased-Gulshan was sitting on the carrier of a bicycle being peddled by his maternal uncle and they both were going towards the temple situated at *Bara Pathar*. At about 1.30 PM, when they reached near the godown of Binai Cement on Bharawas-Rewari road in the area of Rewari Town then Truck bearing registration No. HR-61-A-4061; being driven in a rash and

negligent manner came from behind and straightway hit the bicycle. Due to this impact, both the occupants of the bicycle fell down on the road and the wheels of the offending truck passed over the head of Gulshan. He succumbed to the injuries on the spot. In this matter, the FIR was also registered by the police. It was further pleaded that the deceased was about 13 years of age at the time of accident. Apart from his studies, he used to assist his parents in domestic affairs and in terms of money, he contributed ₹4,000/- per month. Due to this accident, the deceased, who was the brilliant student, lost his life and parents also lost their son in the accident. Therefore, they filed the present claim petition. It was further claimed that the claimants have spent ₹15,000/- on the funeral and last rites.

3. Notice was issued to respondents No. 1 and 2. Respondents No. 1 and 2 filed written statements by taking preliminary objections regarding maintainability of the petition and on merits they claimed that no accident occurred with their vehicle. They also denied the income of the deceased and claimed that their vehicle has falsely been involved in this case. Respondent no. 3 also took identical stand. It was also further pleaded by them that the driver of the offending vehicle was not having a valid and effective driving license at the time of accident. Therefore, Insurance Company was not liable to compensate.
4. The claimants led their evidence by examining the witnesses to prove all the aspects of the case. On the other hand respondents did not lead any evidence. Vide separate statement documents

Ex.R-A to R-D were placed on record.

5. Having appreciated the evidence of the parties, the Tribunal came to the conclusion that the accident in question happened due to negligence of respondent No. 1.
6. While assessing the compensation, the Tribunal recorded a finding that the deceased was of the age of 13 years and student of 8th Class, therefore, he was not earning anything. However, taking the notional income, the annual dependency of the appellants was assessed to be ₹18,000/-. Keeping in view the age of the deceased, the multiplier of 18 was applied. Accordingly, the loss of dependency was assessed to be ₹ 3,24,000/-. Besides this ₹5,000 was awarded for funeral expenses and ₹ 10,000/- was awarded for mental agony suffered by the appellants. Thus, a total of Rs. 3,39,000/- compensation was awarded.
7. Praying for enhancement of the compensation, learned counsel for the appellants has submitted that the income of the deceased has been assessed extremely on the lower side. It is submitted by him that the Hon'ble Supreme Court of India in ***Krishan Gopal and another Versus Lala and others, 2013(4) RCR(Civil)276*** has held that the notional income of a student of the age of 10 years to be ₹2,500/- per month. Therefore, the notional income of the deceased in the present case also deserves to be enhanced to that extent. He has further submitted that the amount granted on account of funeral expenses is too less and therefore, this also deserves to be enhanced.

8. On the other hand learned counsel for the respondents has opposed the enhancement in the amount of compensation. He has submitted that since the deceased was not earning anything, therefore, his notional income has rightly been assessed by the Tribunal.
9. Having considered arguments of the learned counsel for the parties and perused the record of the case, this Court is of the view that the argument of the learned counsel for the appellants deserves acceptance. The Apex Court in case of **Krishan Gopal (supra)** has held that even a child would contribute substantially to the family by his work when seen in terms of money. Therefore, the notional contribution of the child was taken as ₹30,000/- per annum. In this case also, the facts are similar. Rather the deceased in the present case was of 13 years of age. In view of this, the notional contribution of the deceased is taken to be ₹2500/- per month. Therefore, the annual loss of dependency is assessed to be ₹30,000/- per annum. The multiplier of 18 as applied by the Tribunal is retained as such. Therefore, the loss of annual dependency in the present case is assessed to be ₹5,40,000/-(30000X18). Besides this, the compensation awarded on accounts of funeral charges is also on the lower side and the same is enhanced to ₹25,000/-. Further, the Tribunal has awarded ₹10,000/- only for mental agony and sufferings by the claimants. This amount is also on a lower side. The claimants being parents, who have lost their son, are held entitled to an amount of ₹25,000/- on account of mental agony and sufferings.

10. In view of the above, the appellants in the present case are awarded a total amount of ₹5,90,000/- as given below:-

1	Compensation on account of loss of dependency	₹ 5,40,000/-
2	Compensation on account of funeral and last rites expenses	₹ 25,000 /-
3	Compensation on account of mental agony and sufferings	₹ 25,000/-
Total:-		₹ 5,90,000/-

11. The interest is retained as was awarded by the Tribunal in this case

12. In view of the above, the present appeal is allowed and the award of the Motor Accident Claims Tribunal is modified in the above said terms.

10th August, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes