IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 3964 of 2014 (O&M)
Date of decision : 21.09.2017

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Chet Ram and another

...........Appellants

Versus

Gautam Kumar and others

...........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Ashok Kaushik, Advocate for the appellants.

Mr. Abhinav Gupta, Advocate for respondent no.3.

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<u>RITU BAHRI, J.</u>

The present appeal has been filed by the appellants-claimants against the award dated 7.11.2013 passed by the Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as `the Tribunal') whereby the appellants-claimants were held entitled to a compensation of Rs.3,75,000/- on account of the death of their son Deepak. Through this appeal, the appellants-claimants have prayed for the enhancement of the amount of compensation.

Briefly stated the facts of the case are that on 3.8.2011, at about 1:30 p.m, Deepak returned home by a three wheeler from his school known as MVN Public School, Khambi. When he alighted from the three wheeler near his house and was crossing the road, in the meantime, a Santro Car bearing registration No. HR-29X 6697 being driven by Gautam Kumar-respondent no.1 in a rash and negligent manner came and hit the deceased. Resultantly, the deceased sustained multiple grievous injuries in the accident in question and succumbed to his injuries at the spot. The matter was reported to the police and a case vide FIR No. 118 dated 3.8.2011 was registered against respondent no.1 for the commission of offence punishable under Sections 279 and 304-A IPC in police Station Hassanpur.

Chet Ram and Murti parents of Deepak filed claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of their son.

After hearing the submissions of the counsel and going through the evidence led by the parties, Tribunal held that Deepak died due to rash and negligent driving of car No. HR-29X-6697 by Gautam Kumar-respondent no.1 and the claimants were held entitled to a total compensation of Rs.3,75,000/- along with interest @ 7.5% pa from the date of filing of the claim petition till actual realization of the amount. The deceased was held to be **8 years** of age as reflected in PMR Ex.P-5. To calculate the total compensation payable to the claimants, the notional income of the deceased was taken as Rs.15,000/-. Thereafter, by applying the multiplier of 15 (Rs.15,000 x 15), the amount of compensation arrived at Rs.2,25,000/-. The claimants were also awarded a sum of Rs.75,000/- towards future prospects of the deceased and Rs.75,000/- towards non pecuniary damages. As such the claimants were held entitled to a total compensation of Rs.3,75,000/-.

Feeling dissatisfied with the impugned award, the claimants-appellants have preferred the present appeal. Learned counsel for the appellants have referred to a judgment in the case of ***Krishan Gopal and another Vs. Lala and others, 2013 (4) RCR (Civil) 276,*** wherein the appellants were the parents of deceased Tikaram, a ten year old child, who died in a road accident which took place on 19.7.1992. Notional income of child was taken at Rs.30,000/-. Multiplier of 15 was applied to Rs.30,000/- which came to Rs.4.50 Lakhs. Rs.50,000/- was awarded under conventional heads (i.e loss of love and affection, funeral expenses, last rites). Reference in this case was made to a judgment in the case of ***Lata Wadhwa and others vs. State of Bihar and others 2001(4) RCR (Civil) 673*** especially with regard to the second schedule to Section 163-A of the M.V Act for calculating the compensation of a victim below the age of 15 years. Hon'ble the Supreme Court proceeded to take the notional income at Rs.30,000/-. This was done keeping in view that the rupee value has come down drastically from the year 1994 when the notional income of non earning member prior to the date of accident was fixed at Rs.15,000/- per annum. The relevant portion of paragraph 18 of the judgment of the Supreme Court is reproduced as under:

> *"6. Notional income for compensation to those who had no income prior to accident:*
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> ....
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> *(a) Non-earning persons – Rs.15,000/- p.a." The aforesaid clause of the Second Schedule toSection 163-A of the M.V. Act, is considered by this Court in the case of Lata Wadhwa & Ors. v. State of Bihar & Ors.[2], 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 irrecoupable 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 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[3], 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[4], 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. The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy [5], for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more*

> *than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified.*

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. The deceased died as a result of the accident. Reference can be made to a judgment of a Co-ordinate Bench of this Court in the case of ***Nachhattar Singh and another vs. Jagga Singh and others, 2016 (2) PLR 718***, wherein notional income of the deceased boy, who was 15 years old at the time of the accident, which took place in the year 1999, was assessed as Rs.35,000/- per annum.

In the case of ***Krishan Gopal and another (supra),*** wherein the notional income of a 10 years old child was taken at Rs.30,000, the year of the accident was 1992. In the present case, the accident had taken place in the year 2011. Since the value of rupee has come down drastically since the year 1992, the notional income can safely be taken as Rs.50,000/- After applying a multiplier of 18 in view of the ratio of the judgment in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another (2009) 6 SCC 121***, the notional annual income of the deceased comes to Rs.9,00,000/-. The amount of compensation awarded under the conventional heads shall remain the same. Thus, the compensation allowed to the appellants-claimants is enhanced from Rs.3,75,000/- to Rs.10,50,000/-. The enhanced amount of compensation i.e Rs.7,75,000/- will carry interest @9% per annum from the date of filing of the petition till actual 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.

21.09.2017 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	No