

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

F.A.O No. 5056 of 2014 (O&M)

Date of decision:- 05.09.2017

Jasmal and another

...Appellants

Versus

Usman and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sarfaraj Hussain, Advocate
for the appellants

Mr. Rajesh Lamba, Advocate
for respondent No. 1

Mr. Rajnish Malhotra, Advocate
for respondent No. 3-Insurance Company

RITU BAHRI J. (Oral)

1. The present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award/order dated 30.11.2011 passed by the learned Motor Accident Claims Tribunal, Fast Track Court, Nuh (for short, 'the Tribunal') to the tune of Rs.2,50,000/-.

FACTS NOT IN DISPUTE

2. On 14.09.2009, Azruddin (since deceased) son of Jasmal @ Jaspal was going on his bicycle after attending his school to his village on the correct left hand side of the road. When he reached near Government Hospital, Pinangwan, the dumper bearing No. HR-55-C-8478 being driven rashly and negligently came from Shikrawa side and hit into Azruddin due to which he fell down from his bicycle and was crushed with the front wheel of the driver side of the dumper. The occurrence was witnessed by Sirajuddin son of Mohd. Yasin working as teacher in Sakras School. The deceased died on the spot and was thereafter taken to Government Hospital,

Mandikhera for PMR. F.I.R No. 315 dated 14.09.2009 was registered under Sections 279/304-A IPC in police Station, Punhana.

3. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to be enhanced, in view of the judgment '**Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77**', '**Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54**' and '**Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459**', **Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520 and Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2015(2) SCC (Civil) 193**.

4. On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal.

5. Learned counsel for respondent No. 1 has referred to RFA No. 115-2017 titled as **Sheoraj and others vs. State of Haryana and others, decided on 03.04.2017**, wherein this Court while referring to the judgment of Hon'ble the Supreme Court of India in a case of **Imrat Lal and others v. Land Acquisition Collector and others, 2015(2) RCR (Civil) 437 and Dhiraj Singh (D) Tr LRs v. Haryana State and others, 2015 (2) RCR Civil 5074** condoned the delay. However, to balance the equities, for the period of delay, the applicants were not held entitled to interest on the enhanced compensation

6. I have heard learned counsel for the parties and perused the record.

COMPENSATION ASSESSED BY MACT

7. The learned tribunal held that the deceased was 13 years and awarded the compensation of Rs.2,50,000/-. However, respondent-Insurance Company were given recovery rights to recover the compensation from respondent No. 1 and 2 as respondent No. 1 was not holding the valid and effective driving licence.

RE-ASSESSED COMPENSATION

8. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of “***Kishan Gopal Vs. Lala and others 2013 AIR SC (Civil) 2465***” wherein in a case of death of child aged 10 years, Hon'ble the Supreme Court took the notional income of the deceased at Rs.30,000/- and applied the multiplier of 15 and the compensation came to Rs.4.50 lacs, Rs,50,000/- was given towards loss of love and affection, funeral expenses, last rites etc. Hon'ble the Supreme Court while dealing with a case filed under Section 163-A of the Motor Vehicles Act laid criteria for awarding the compensation in a case filed under Section 163-A of the Motor Vehicle Act. Hon'ble the Supreme Court in para 18 of the judgment has held as under:-

“18. 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) RCR (Civil) 673, 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 irrecusable 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 and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ 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.”

9. Learned counsel for the appellant has further referred to a judgment passed by this Court in a case of **Sh. Amandeep Singh vs. The Oriental Insurance Co. Ltd and others, passed in FAO No. 5 of 2008, decided on 11.09.2014** whereby in a similar circumstances, while dealing with the claim petition filed under Section 163-A of the Motor Vehicles Act, this Court took the notional income of child at Rs.30,000/- who died in the year 2006 and thereafter, awarded him lump sum amount of Rs.1 lacs under the conventional heads of loss of love and affection, funeral expenses and last rites.

10. In the present case, the compensation is being reassessed as per the judgment titled “**Rajesh and others Vs. Rajbir Singh and others, 2013 (9) SCC 54**”, **Kishan Gopal's case (supra)** and **Amandeep's case (supra)**, which reads as under:-

Sr. No.	Heads	Calculations
(i)	Notional Income	Rs.30,000/-
(ii)	Compensation after multiplier of 15 is applied	Rs.30,000X15=Rs.4,50,000/-
(iii)	Loss of love and affection to parents, funeral expenses, loss of estate	Rs.1,00,000/-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(v)	Total Compensation awarded	Rs.5,50,000/-
(vi)	Enhanced amount of compensation	Rs.5,50,000-Rs.2,50,000=Rs.3,00,000/-

11. The enhanced amount of compensation of Rs.3,00,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. Since there was a delay of 707 days in filing of the appeal, the appellants will not get the interest of 365 days. However, the appellants shall get interest @ 9% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of *Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539*. The remaining conditions of disbursal of amount shall remain unaltered.

12. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

05.09.2017

G Arora

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No