

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 5938 of 2014 (O&M)

Date of Decision: 29.9.2017

Baldev Raj and another

.....Appellants

Versus

Shiv Shankar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rishav Jain, Advocate
Amicus Curiae for the appellants.

Ms. Madhu Sharma, Advocate
for respondent No. 3-insurance company..

ANITA CHAUDHRY, J

CM-16494-CII-2014

Application is allowed for the reasons stated therein.

Delay of 190 days in refiling the appeal is condoned.

CM-16495-CII-2014

Application is allowed for the reasons stated therein.

Delay of 210 days in filing the appeal is condoned.

FAO-5938-2014

This appeal is directed against the award dated 22.11.2012
passed by the Motor Accident Claims Tribunal, Ambala.

Sukhshant aged three years died in an accident on 16.9.2011.
His parents filed a claim petition under Section 163-A of the Motor
Vehicles Act. The Tribunal awarded a lump-sum amount of Rs. 1,50,000/-.

The parents are seeking enhancement.

I have heard both the sides at length.

Counsel for the petitioners urges that in ***Krishan Gopal and***

another versus Lal and others, the notional income of the minor was taken as Rs. 30,000/- and multiplier of 15 was applied and some amount was awarded under the conventional heads. The counsel further submits that though in **Krishan Gopal's** case (supra) the child was 10 years old but in **Smt. Sushma and another versus State of Haryana and others 2014(2) R.C.R. (Civil) 452**, this Court had followed **Krishan Gopal's** (supra) judgment where the child was three years old.

The submission on behalf of the insurance company is that the notional income cannot be taken as Rs. 30,000/- as the child was just three years old and the Apex Court in **Krishan Gopal's** case (supra) was dealing with a case where the child was 10 years old and was assisting the parents in agricultural pursuits.

It would be necessary 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/- per annum.

The Hon'ble Apex Court in In **Lata Wadhwa & Ors. Vs. State of Bihar & Ors., 2001(4) RCR (Civil) 673** after noticing the submissions made on behalf of TISCO calculated the compensation and awarded some amount under the conventional heads.

Though, there is no yardstick to measure the loss of future prospects of the child but where the claimants are able to lead evidence to

show that the child was performing well then there is some yardstick to

measure the loss and as the natural consequences the compensation can be higher but there can be no golden rule applicable to all the cases for measuring the value of human life or limit. For children under the age of 10, a composite amount is awarded. The deceased was just 3 years old. He could not have assisted the parents as he was too small, therefore, the notional income can be taken at Rs. 15,000/- per annum. No cut should be made and after applying the multiplier of 15, the compensation would be Rs. 2,25,000/-. To this, a sum of Rs. 75,000/- should be added for non pecuniary damages. In the case of ***R.K. Malik and another Vs. Kiran Pal AIR 2009 (SC) 2506***, the Hon'ble Apex Court upheld the judgment of Delhi High Court upholding the award of non pecuniary damages of Rs. 75,000/- in addition to the compensation allowed for the death of the child.

After adding Rs. 75,000/-, the compensation would come to Rs. 3,00,000/-. The Tribunal has awarded Rs. 1,50,000/- which would be deducted and the remaining amount would be paid by the insurance company at the same rate of interest as awarded by the Tribunal from the date of filing of the petition till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

September 29, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No