

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.8198 of 2014
DECIDED ON: May 15, 2017

RAJ BALA AND ANOTHER

.....APPELLANTS...

VERSUS

SATBIR AND ANOTHER

....RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sandeep Kotla, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate,
for respondent No.2.

JASPAL SINGH, J.

Aggrieved against the inadequacy of the compensation awarded by the Motor Accident Claims Tribunal, Hisar vide award dated 29.08.2013 on account of death of their minor son Rajesh, aged about 12 years in a vehicular accident occurred on 07.09.2011, the appellants-claimants have approached this Court by way of instant appeal.

2. The appellants are the parents of deceased-Rajesh, who died in a road side accident occurred on 07.09.2011, on account of rash and negligent driving of car bearing Registration No.HR-20J-5980 by its driver Satbir. After the accident, Rajesh was got admitted by his father with the help of passerby in General Hospital, Adampur where he succumbed to the injuries sustained by

him in the accident. FIR No. 266, dated 07.09.2011 under Sections 279 and 304-A IPC was registered at Police Station, Adampur against respondent No.1 and after completion of the investigation, he has been challaned by the police for his rash and negligent act. The car involved in the accident, in which, Rajesh lost his life, was duly insured with respondent No.2-Insurance Company.

3. Upon notice of the claim petition, it was resisted by the owner, driver as well as by the insurance company by taking different plea and ultimately, on analysis of the entire evidence and after hearing learned counsel for the parties, the Tribunal awarded compensation to the tune of ₹3,50,000/- along with interest @ ₹7.5% per annum to the claimants in equal shares from the date of filing of the claim petition till the date of realization.

4. Dissatisfied with the quantum of compensation awarded by the Id. Tribunal, the appellants have filed the instant appeal.

5. While assailing the impugned award dated 29.08.2013, it has been argued with vehemence by learned counsel for the appellants that deceased-Rajesh was aged about 12 years at the time of accident and was a brilliant student of 6th class. His future prospects were very bright. He was contributing to the tune of ₹3000/- per month to the family. The Tribunal has only considered his notional income to the tune of ₹15,000/- per annum. Even, the Id. Tribunal has not adhered to the various guidelines highlighted in cases ***“Sarla Verma v. Delhi Transport Corporation”, 2009(3) RCR (Civil) 77***, ***“Kerala SRTC v. Susamma Thomas”, (1994) 2 SCC 176***, ***“Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy”, 2012 (3) RCR (Civil) 203*** as well as ***“Kishan Gopal and another v. Lala and others”, 2013(4) RCR (Civil) 276***.

6. It has further been submitted by learned counsel for the appellants that notional income of the deceased should have been determined to the tune of ₹30,000/- per annum and the claimants/appellants are entitled to the compensation to the tune of ₹5 lacs as has been observed in the above referred judgments.

7. On the other hand, learned counsel for the respondent has supported the impugned award dated 29.08.2013 and has submitted that just and adequate compensation has already been awarded by the Id. Tribunal. There is no illegality and infirmity in the award. Thus, appeal being devoid of merits is liable to be dismissed, that too, with special costs.

8. After bestowing due consideration to the rival submissions made by learned counsel for the parties and appraisal of records available, this Court finds force in the submissions made by learned counsel for the appellants for the enhancement of compensation awarded by the Id. tribunal.

9. In ***Kishan Gopal's*** case (supra), the deceased was 10 years of age, who was assisting the appellants in their agricultural occupation and the claimants in that case were awarded an amount of ₹5 lacs as compensation. It would be appropriate to reproduce the relevant portion of the aforesaid judgment, which reads as under:-

“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 ₹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, 2009\(3\) RCR 9Civil\) 77:2009 \(3\) Recent Apex Judgments \(RAJ\) 373: \(2009\) 6 SCC 121](#), 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 ₹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, 2012 \(3\) RCR \(Civil\) 203: 2012 \(3\) Recent Apex Judgments \(RAJ\) 92: \(2011\) 14 SCC 481](#), 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.”

10. Adverting to the facts and circumstances of the case in hand,

deceased-Rajesh was 12 years of age at the time of his death in a vehicular accident and his case is fully covered within the four corners of the above referred judgment(s). Thus, appellants also deserve the enhancement of the compensation. The compensation awarded by the ld. Tribunal to the tune of ₹3,50,000/- cannot be termed to be just and adequate. Rather, it is on lower side.

11. In the light of what has been discussed above, the instant appeal is partly allowed and the amount of compensation stands enhanced to ₹5 lacs, which shall be shared equally by the appellants and shall be payable by respondent No.2-Insurance Company within a period of two months from the date of receipt of certified copy of this order and on its failure to make the payment within stipulated period, it would entail interest @ ₹7.5% as awarded by the ld. Tribunal, from the date of filing of claim petition till actual realization. No order as to costs.

May 15, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes