IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4934 of 2011

Date of Decision: 18.09.2018

Harbhajan and another

....Appellants

Versus

Mahesh Kumar and Others

....Respondent

CORAM: HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ram Bilas Gupta, Advocate for the appellants.
Mr. Sandeep Kotla, Advocate for Insurance Company-respondent No.3.

B.S.WALIA, J (ORAL)

[1] Appeal has been filed by the claimants-parents for enhancement of compensation on account of death of their only son, Chintu, who died on 20.12.2009 as a result of a motor vehicular accident on 13.12.2009. Deceased was 14 years old and was a student of Class V.

[2] At the time of hearing, learned counsel for the appellants claimed enhancement of compensation solely on account of the decision by Hon'ble the Supreme Court in **Kishan Gopal and another vs. Lala and others, 2014 (1) SCC 244**. Learned counsel contended that in the light of aforementioned decision notional income of the deceased was liable to be taken more than ₹30,000/- per annum and compensation payable worked out by applying multiplier of 15 on account of age of the mother of the deceased i.e. 40 years, as evident from the ration card (Ex.P.15), besides by awarding ₹30,000/- towards funeral expenses and loss of estate and a sum of ₹50,000/- on account of medical expenses incurred.

[3] Learned counsel for the respondent, on the other hand, contended that the notional income of the deceased was liable to be taken as ₹30,000/- per annum only since in **Krishan Gopal's case (supra)**, the accident had taken place in the year 1992 besides the deceased was helping his parents whereas in the instant case, the deceased was merely a student of Class V.

[4] Before proceeding any further, it is apt to reproduce the relevant extract of the decision rendered in **Krishan Gopal's case (supra),** which reads as under:

> " *18. Point Nos.2 and 3 are answered together in favour of the appellants for the following reasons:-*
>
> *xxxx xxxx xxxx*
>
> *Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious issue Nos.1 & 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10 year old son. 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. 2014 (4) RCR (Civil) 673; (2001) 8 SCC 197, 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 2009 (3) RCR (Civil) 77, 2009 (3) RAJ 313; (2009) 6 SCC 121, 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 (1994) 2 SCC 481, 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 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."*

[5] I have considered the submissions made by learned counsel for the parties and am of the view that notional income of the deceased can be taken approximately as ₹30,000/- per annum since the deceased was 14 years of age and was a student of Class V and was neither helping his parents nor was earning any amount. Accordingly by treating notional income of the deceased as ₹30,000/- per annum and by applying multiplier of 15 (₹30,000 x 15= ₹4,50,000/-) awarding ₹15,000/- each on account of loss of estate and funeral expenses and further ₹50,000/- on account of medical expenses incurred, a sum of ₹5,30,000/- is awarded to the appellants.

[6] Accordingly, in view of the position as noted above, as against

the compensation of ₹3,00,000/- awarded to the appellants, the appellants are held entitled to award of compensation of ₹5,30,000/- along with interest @ 9% per annum w.e.f the date of claim petition till the date of payment, less amount, if any already paid.

[7] Appeal is allowed. Award is modified to the extent noted above.

September 18, 2018 **(B.S. WALIA)**
manoj **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No