

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-5163-2014 (O&M)
Date of Decision: 31.07.2018

Ms. Satinder Kaur

--Appellant

Versus

Shri Gurnam Singh & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. D.P. Sharma, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for respondent
no.2-Insurance Co.

TEJINDER SINGH DHINDSA.J (Oral)

This is claimant's appeal seeking enhancement of compensation.

Brief facts that may be noticed are that on 18.2.2013 claimant/appellant herein Satinder Kaur along with her family members namely Jasbir Singh (husband), Harmeet Singh (son), Mankinder Kaur (daughter) and Gurdeep Singh (son) were returning from village of sister of the claimant and proceeding to their residence in Manimajra in a Maruti car bearing registration no. CH-03-A-8833 being driven by Jasbir Singh (husband). At about 6 A.M when the family reached near Civil Hospital, Kurali, a truck bearing registration no. PB-12-N-0181 (to be referred to as the offending vehicle) came from the opposite side being driven in a rash and negligent manner and collided with the car. As a result of the accident, claimant's husband Jasbir Singh, son Harmeet Singh and daughter Mankinder Kaur died on the spot. Claimant herself and another son Gurdeep Singh suffered serious injuries and were referred to P.G.I., Chandigarh. Gurdeep Singh also succumbed to the injuries suffered during the course of treatment at P.G.I, Chandigarh on 22.2.2013.

Claim Petition No.1148 of 2013 was filed under Section 166 of the Motor Vehicle Act in the M.A.C.T., Chandigarh claiming just and adequate compensation on account of death of Harmeet Singh i.e. son of the claimant.

Claim petition having been contested, the following issues were framed by the Tribunal:-

- “1. Whether deceased died on account of injuries sustained by him in a road accident, which took place on 18.02.2013 due to rash and negligent driving of truck No.PB-12-N-0181 by its driver-respondent no.1?OPP*
- 2. Whether claimant is entitled to any amount as compensation, if so, what amount and from whom?OPP*
- 3. Whether respondent no.1 was not holding any valid driving licence at the time of accident, if so, its effect?OPR-3*
- 4. Relief.”*

Since the only issue involved in the instant appeal is with regard to quantum of compensation, I would be adverting to the findings recorded by the Tribunal as regards Issue No.2.

Perusal of the award dated 31.1.2014 passed by the Tribunal would reveal that the age of Gurdeep Singh (since deceased) has been accepted as 12 years as per Post Mortem Report Ex. PA and Birth Certificate Ex. C-2. Notional income of the deceased has been assessed as Rs.15,000/- per annum and a multiplier of 15 has been applied. An amount of Rs.75,000/- has been awarded towards future prospects and an identical sum of Rs.75,000/- has been awarded towards non-pecuniary damages. A sum of Rs.25,000/- has also been awarded towards transportation, funeral expenses and last rites etc. The total compensation amount awarded is Rs.4

lacs along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. Liability to pay the compensation amount has been fastened jointly and severally upon the driver/owner and Insurance Company.

I have heard counsel for the parties at length.

The Apex Court in ***Kishan Gopal and another Vs. Lala and others, 2013(4) R.C.R (Civil), 276*** had considered the aspect of quantum of compensation pertaining to the death of a 10 year old boy and had held as follows:-

*“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 \(4\) R.C.R \(Civil\), 673](#), while examining the tortious 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) R.C.R (Civil) 77: 2009(3) Recent Apex Judgments (R.A.J.) 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 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 observations made by the Apex Court in **Kishan Gopal's** case (supra) would apply even to the facts and circumstances of the present case.

Accordingly, the compensation amount awarded by the Tribunal on account of death of Gurdeep Singh aged 12 years, the quantum of compensation is enhanced from Rs.4 lacs to Rs.5 lacs.

The enhanced compensation amount be released in favour of the claimant/appellant along with interest @ 6% per annum from the date of filing of the claim petition till actual realization.

Appeal is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

31.07.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No