IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No. 3325 of 2016

Hakam Singh and anr. ...Appellants

Versus

Dimple and others ...Respondents

2. FAO No. 4673 of 2016

Dimple and others ...Appellants

Versus

Hakam Singh and ors. ...Respondents

Date of decision:- 22.03.2018

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ishan Gupta, Advocate
for the appellants in FAO No. 3325 of 2016
and for respondent Nos. 1 and 2 in FAO No. 4673 of 2016

Mr. Rajbir Singh, Advocate
for the appellants in FAO No. 4673 of 2016
and for respondent Nos. 1 and 2 in FAO No. 3325 of 2016

Mr. Ram Avtar, Advocate
for respondent-Insurance Company in both the appeals

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RITU BAHRI J.

The above said two appeals, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned award dated 16.03.2016 passed by the learned Motor Accident Claims Tribunal, Sangrur (for short the Tribunal) under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

FAO No. 3325-2016 has been filed by the appellants i.e owner and driver of the offending vehicle and FAO No. 4673-2016 has been filed by the claimants for enhancement of the compensation amount.

Facts not in dispute

On 20.07.2015, Payal Singh, aged 14 years (now deceased) was going to her school on her bicycle and was being followed by her uncle Jagdish. When they reached near Saheed Bhagat Singh Chownk, outside Sunami Gate, Sangrur, a truck trailer bearing registration No. PB-23-H-5155 being driven by respondent No. 1 in a rash and negligent manner, came from opposite side and struck against the bicycle of the deceased. As a result of this accident, she fell down on the road and the tyres of the offending vehicle ran over her abdomen and legs. Ultimately, she succumbed to her injuries in PGI Chandigarh. F.I.R No. 193 dated 21.07.2015 under Sections 279/427/304-A IPC was registered at P.S. City Sangrur in this regard.

COMPENSATION ASSESSED BY THE TRIBUNAL

The learned Tribunal after going through the evidence led by the parties, assessed the notional income of the deceased at Rs.30000/- per annum and thereafter, applied the multiplier of 15, as set out in the second Schedule of the Motor Vehicle Act. The claimants were also held entitled to Rs.50,000/- on account of loss of love and affection, funeral expenses and last rites. The total compensation of Rs.5 lacs were awarded to the claimants. However, the learned Tribunal held that since the driver was not authorized to drive the heavy vehicle i.e truck, as per statement of R.W.1 Avtar Singh, Clerk, office of DTO, Sangrur, therefore, the recovery rights were given to the Insurance Company to recovery the compensation amount from driver and owner.

Feeling dissatisfied with the impugned award, appellants i.e driver and owner as well as the claimants have preferred the above mentioned appeals.

4. Learned counsel for the appellant i.e owner and driver at the very outset has referred to ***FAO No. 2568-2013 titled as Bharti Axa General Insurance Co. Ltd. v. Manjit Singh and others, decided on 04.02.2016*** wherein the Insurance Company were not given recovery rights and they filed the appeal before this Court seeking recovery rights on the ground that the driver did not have the effective driving license, as he had only transport vehicle endorsement on light motor vehicle license and he did not have a heavy transport vehicle endorsement. This Court dismissed the appeal of the Insurance Company and held that there is no error in providing full indemnity for the owner/insured of the vehicle. It has been further observed that the definition has been lost after the amendment was made in the Rules in the year 1999. There is only one category of driving license and there is no distinction between LMV and HMV transport vehicle license. The only difference which still subsists is rigorous testing skills for persons who drive dangerous vehicles containing inflammable articles.

5. Learned counsel for the appellant/claimants on the other hand contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced. Learned counsel for the appellant has referred to a judgment in the case of ***Kishan Gopal and another Vs. Lala and others, 2013 (4) RCR (Civil) 276,*** wherein the appellants were the parents of deceased Tikaram, a ten year old child, who died in a road accident which took place on 19.7.1992. Notional income of child was taken at Rs.30,000/-. Multiplier of 15 was applied to Rs.30,000/- which came to Rs.4.50 Lakhs. Rs.50,000/- was awarded under conventional heads

(i.e loss of love and affection, funeral expenses, last rites). Reference in this case was made to a judgment in the case of ***Lata Wadhwa and others vs. State of Bihar and others 2001(4) RCR (Civil) 673*** especially with regard to the second schedule to Section 163-A of the M.V Act for calculating the compensation of a victim below the age of 15 years. Hon'ble the Supreme Court proceeded to take the notional income at Rs.30,000/-. This was done keeping in view that the rupee value has come down drastically from the year 1994 when the notional income of non earning member prior to the date of accident was fixed at Rs.15,000/- per annum. The relevant portion of paragraph 18 of the judgment of the Supreme Court is reproduced 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.[2], while examining the tortuous liability of the tortfeasor 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[3], 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[4], 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 [5], 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.*

Learned counsel for the Insurance Company has vehemently opposed the prayer made by the owner and driver as well as by the claimants.

Learned counsel for the Insurance Company has referred to statement of R.W.1 Avtar Singh, Clerk, office of DTO, Sangrur who deposed that the driver was not authorized to drive the heavy vehicle i.e truck and thus the recovery rights have rightly been given to the Insurance Company.

This argument is liable to be rejected in view of ***Manjit Singh's case (supra)***. Further a bare perusal of the driving license (A-1) of the driver of the offending vehicle shows that it was issued to Hakam Singh s/o Gurcharan Singh for driving LMV-GV, LMV-CAB, MCWG, Tractor but he was not authorized to drive truck which is a heavy transport vehicle. The license was valid for transport till 18.09.2017 for for non-transport till 14.11.2017 but in **Manjit Singh case (supra)**, the appeal filed by the Insurance Company was dismissed and it has been held that there is no error in providing full indemnity for the owner/insured of the vehicle. It has been further observed that the definition has been lost after the amendment was made in the Rules in the year 1999. There is only one category of driving license and there is no distinction between LMV and HMV transport vehicle license. The only difference which still subsists is rigorous testing skills for persons who drive dangerous vehicles containing inflammable articles.

Now coming to the compensation part, reference can be made to a judgment of a Coordinate Bench of this Court in the case of ***Nachhattar Singh and another vs. Jagga Singh and others, 2016 (2) PLR 718***, wherein annual income of the deceased boy, who was 15 years old at the time of the accident, which took place in the year 1999, was assessed as Rs.35,000/- per annum.

In the case of ***Krishan Gopal and another (supra),*** wherein the notional income of a 10 years old child was taken at Rs.30,000, the year of the accident was 1992.

In the present case, the accident had taken place in the year 2015 and the age of the deceased at the time of the accident was 13 years. Since the value of rupee has come down drastically since the year 1992, the notional income can safely be taken as Rs.50,000/-. The compensation is being reassessed as per the judgments mentioned above:-

Sr. No.	***Heads***	***Calculations***
(i)	Notional Income	Rs.50000/- per annum
(ii)	Compensation after multiplier of 18 is applied	Rs.50000 X 18= Rs.09,00,000/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Total Compensation awarded	Rs.09,30,000/-
	Enhanced amount of compensation	**Rs.09,30,000-Rs.05,00,000=Rs.4,30,000/- (rounded off to Rs.4,30,000/-)**

9. The enhanced amount of compensation of Rs.4,30,000/- in FAO No. 4673-2016 shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants-Dimple and others shall also get interest @ 7.5% 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 ***Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018***. Further the Insurance company is liable to make the payment of compensation to the appellants in FAO No. 4673-2016. It is hereby directed that the amount of Rs.25,000/- deposited by the appellants (FAO No. 3325-2016) at the time of filing of appeal in the Registry of this Court be returned to them.

Accordingly, the award stands modified to the above extent and FAO No. 3325-2016 filed by the appellants i.e owner and driver of the offending vehicle and FAO No. 4673-2016 filed by the claimants for enhancement of the compensation amount stands allowed.

March 22, 2018 (***RITU BAHRI***)
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***