**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**F.A.O. No. 1217 of 1991
DATE OF DECISION :- October 01, 2019**

Surjit Kaur and another ...Appellants

Versus

Sukhwinder Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- None for the appellants.

Mr. Abhishek Goyal, Advocate for Mr. Pardeep Goyal, Advocate for respondent No. 3-Insurance Company.

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As per office report, learned counsel for the appellants has been informed with regard to the appeal in question but he has not turned up. There is no representation on behalf of the appellants but since the case relates to the year 1991, I proceed to decide it after hearing learned counsel for the Insurance Company and going through the record.

Briefly stated facts of the case are that on account of death of a four year old child namely Lakhwinder Singh in a motor vehicular accident which took place on 14.11.1989 at about 2.40 P.M. statedly on account of rash and negligent driving of Bus No. PUC-4517 driven by respondent No. 1 Sukhwinder Singh, parents of the deceased namely his mother Smt. Surjit Kaur and father Sh. Parkash Singh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Sukhwinder Singh-driver, Verma Bus Service through its proprietor (owner) and United Insurance Co. Ltd, Rajpura-insurer of the Bus claiming compensation.

Notice of the claim petition was given to the respondents who put in appearance and offered a contest.

On conclusion of trial, the Motor Accident Claims Tribunal, Patiala vide Award dated 25.7.1991 accepted the petition and granted compensation of Rs.15,000/- with interest at the rate of 12% per annum from the date of filing of claim petition till actual realization. Respondent Nos. 1 and 2 were held to be jointly and severally liable with the observations that under policy Ex. R2 the Insurance Company would be liable to pay the amount to the claimants along with interest and amount shall be apportioned among the claimants in equal shares.

Feeling dissatisfied with the amount of compensation awarded by the Motor Accident Claims Tribunal, Patiala, the claimants have approached this Court by way of filing an appeal seeking enhancement of compensation.

Notice of the appeal was given to the respondent-Insurance company who had put in appearance through counsel.

The deceased in this case was a 4 years old child. The Apex Court in judgment ***'Kishan Gopal and another versus Lala and others 2013 (4) R.C.R. (Civil) 276'*** has provided criteria for Award of compensation in case of death of a child in a motor accident. It was a case of death of a child of 10 years. His notional income was taken to be Rs.30,000/-. Multiplier of 15 was applied and in that way the compensation was calculated as Rs.4,50,000/-. Rs.50,000/- was awarded under conventional Heads i.e. loss of love and affection, for funeral expenses and last rites. Total compensation of Rs.5 lacs was awarded to the claimants. In an earlier judgment by the Apex Court ***'R.K. Malik and another versus Kiran Pal and Ors. 2009 (3) R.C.R. (Civil) 403'*** while dealing with death of 29 School Children in a motor accident it was observed that compensation can be awarded keeping in view the Second Schedule of Motor Vehicles Act and further that non-pecuniary compensation should not be fixed since the loss of expectancy of life and pain and suffering uniform to all regardless of status.

Under the circumstances, I find that the compensation awarded is very low. Though learned counsel for the Insurance Company is arguing that the accident had taken place in the year 1989 and keeping in view the price index at that time the compensation was rightly awarded, however, I find that the appeal against that Award is pending for a long time and the claimants cannot be made to suffer on that account. Though learned counsel for the Insurance Company has argued that the liability of the Insurance Company was limited up to Rs.15,000/- only but in this case if the Insurance Company feels so it can recover the remaining amount from the insurer by initiating appropriate proceedings but as far as the claimants are concerned the Insurance Company is liable. Therefore, the appeal is accepted. The compensation is enhanced to Rs.5 lacs. The Tribunal has already awarded a sum of Rs.15,000/-. The claimants would be entitled to get the additional compensation of Rs. 4,85,000/- with interest at the rate of 7.5% per annum from the date of filing of the appeal till actual realization. The liability of all the three respondents to pay this amount being joint and several. The amount of additional compensation shall be apportioned amongst both the claimants in equal shares.

The appeal is allowed accordingly.

(H.S. MADAAN)
JUDGE

October 01, 2019
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No