

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

FAO No.1791 of 2001

Date of Decision: 21.01.2019

Het Ram

...Appellant

Versus

Satish Kumar and others

....Respondents

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

Present: Mr. Anil Shukla, Advocate for the appellant.

Service of respondent No.2 dispensed with vide order dated 01.08.2018.

None for respondent Nos.1 and 3.

B.S.WALIA, J (Oral).

1. None has put in appearance on behalf of respondent No.3/Insurance Company. Since the appeal is of the year 2001, therefore, I am not inclined to adjourn the matter any further.

2. Accordingly, with the able assistance of learned counsel for the appellant, I have gone over the record.

3. Appeal has been filed by the father of Lalita, who died in a motor vehicular accident on 22.10.1997, seeking enhancement of lump sum compensation of ₹52,000/- awarded by the learned Motor Accidents Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal').

4. The Tribunal took into account the age of the deceased as about 14 years as also the fact that she was a student of class 6th and

awarded lump sum compensation of ₹50,000/- plus ₹2,000/- on account of funeral expenses.

5. Prayer is for enhancement of compensation in the light of decision of Hon'ble the Supreme Court in the case of Kishan Gopal and another vs. Lala and others 2014 (1) SCC 244.

6. I have perused the record and considered the submissions of learned counsel for the appellant.

7. Hon'ble the Supreme Court in Kishan Gopal's case (supra) having regard to the fact that the deceased was 10 years of age and was assisting his parents in agriculture operations as also the fact that the value of the rupee had 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 ₹15,000/-, took the notional income of the deceased as ₹30,000/- per annum, in the case of accident dated 19.07.1992. Hon'ble the Supreme Court by taking into account the age of the mother of the deceased i.e. 36 years, applied multiplier of '15' and awarded ₹4,50,000/- as compensation besides ₹50,000/- under conventional heads towards love and affection, funeral expenses, last rites etc.

8. Deceased in the instant case was aged about 14 years and was a student of class 6th besides was helping her parents in agriculture operations and died in a motor vehicular accident on 22.10.1997. Accordingly, notional income as applied by Hon'ble the Supreme Court in Kishan Gopal's case (Supra) i.e. ₹30,000/- per annum is applied in the instant case also. As regards applicability of multiplier, as per the Second Schedule to the Motor Vehicles Act, 1988, upto the age of 15 years,

FAO No.1791 of 2001

multiplier of 15 is applicable. Accordingly, multiplier of 15 is held applicable in the instant case.

9. As regards appropriate compensation under conventional heads, it needs mention that as per paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in National Insurance Company Ltd. versus Pranay Sethi and others, 2017(4) RCR (Civil) 1009, compensation of ₹15,000/-, ₹40,000/- and ₹15,000/- respectively is to be awarded on account of loss of estate, loss of consortium and funeral expenses.

10. After taking into account the decision rendered in Pranay Sethi's case (supra), Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs. Nanu Ram Alias Chuhru Ram, 2018 (4) RCR (Civil) 333, held that parents of a deceased unmarried child were entitled to loss of filial consortium @ ₹40,000/-.

Accordingly, the appellant and proforma respondent No. 4 i.e. mother of the deceased are held entitled to award of ₹15,000/- on account of loss of estate, ₹15,000/- on account of funeral expenses besides ₹40,000/- each on account of loss of filial consortium.

11. Though, the appellant has made claim for award of compensation of ₹2,00,000/- in the claim petition, however, the aforementioned aspect of the matter need not hold this Court in view of the decision of Hon'ble the Supreme Court in Nagappa vs. Gurudayal Singh and others 2003 (2) SCC 274 and Ibrahim vs. Raju and others in Civil Appeal No.8943 of 2011, decided on 31.10.2011, wherein it was held that it is always open to a Tribunal to award compensation more than what is claimed as it is the duty of the Tribunal to award just and proper

compensation. Same principle would apply in hearing of an appeal against the award of the Motor Accidents Claims Tribunal. Accordingly, the appellant and proforma respondent No.4 are held entitled to the following compensation :

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
1.	Compensation	Rs.50,000/- in lump sum	As below
2	Notional Income	Nil	₹30,000/- per annum
3	Multiplier applied	Nil	15
4	Annual Dependency	Nil	₹30000x15=₹4,50,000/-
5	Funeral Expenses	₹2,000/-	₹15,000/-
6	Loss of Estate	Nil.	₹15,000/-
7	Loss of Filial Consortium	Nil.	₹80,000/- i.e. ₹40,000/- each to the appellant and proforma respondent No.4
8	Interest	12% per annum	9% per annum
	Total	₹52,000/-	₹5,60,000/-

12. Accordingly, as against lump sum compensation of ₹52,000/- awarded by the Tribunal, the appellant and proforma respondent No.4 are held entitled to award of compensation of ₹5,60,000/- along with interest @ 9% per annum on enhanced amount w.e.f. the date of filing of the claim petition till date of payment, less amount if any already paid.

13. Accordingly, appeal is allowed and award dated 06.02.2001, passed by the learned Tribunal is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

21.01.2019

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No