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

**1** **FAO-2339-2015(O&M)**

Date of Decision : September 03, 2019

SALAMUDDIN AND ANR

.....Appellants

***VERSUS***

SOKAT AND ORS

.....Respondents

**2** **FAO-106-2015**

SALAMUDDIN AND ANR

.....Appellants

***VERSUS***

SOKAT AND ORS

.....Respondents

**3** **FAO-9574-2014**

HABIB ALAM

.....Appellant

***VERSUS***

SOKAT AND ORS

.....Respondents

**4** **FAO-10626-2014**

WASIM

.....Appellant

***VERSUS***

SOKAT AND ORS

.....Respondents

**CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR**

Present : Mr. Kunal Dawar, Advocate
for the appellants.

Mr. Ram Bilas Gupta, Advocate
for respondents No.1 and 2.

Mr. R.K.Bashamboo, Advocate
for respondent No.3-Insurance Company

**NIRMALJIT KAUR, J. (Oral)**

CM-25150-CII-2015 IN
FAO-2339-2015

For the reasons mentioned in the application, the application is allowed and the delay of 11 days in re-filing of the appeal is condoned.

CM-25151-CII-2015 IN
FAO-2339-2015

For the reasons mentioned in the application, the application is allowed and the delay of 18 days in filing of the appeal is condoned.

Main case

All the above mentioned appeals shall stand decided by this common order as all the appeals arise out of the same award.

The appeals i.e. FAOs-2339 and 106-2015 pertained to the deaths of minor children of the age of 11 years and 12 years respectively. The appeals i.e. FAOs-9574 and 10626-2014 pertained to the injury cases involving children of the age of 14-15 years respectively.

While praying for enhancement in the appeals i.e. FAOs-2339 and 106-2015, learned counsel for the appellants submitted that the notional income of the minor deceased children has been taken as Rs.15,000/- per annum. The appellants, here are the parents of the deceased and have still not recovered from the mental shock. Their future hope stands demolished. It is further stated that the rate of interest awarded is also on the lower side. It should have been atleast 9% per annum. Reliance is placed on the judgment rendered by this Court in the case of **Beet Nath Vs. Gulab Singh**, FAO No. 159 of 2015 decided on 10.7.2017 as well as **Sunita Devi and another Vs. Vijay Pal and others**, *2018(2) Law Herald 1659* vide which the learned Single Judge of this Court took into account the notional income as Rs.50,000/- per annum.

Learned counsel for the respondent-Insurance Company while vehemently opposing the enhancement by taking Rs.50,000/- per annum as the income submitted that the same would be against the well settled proposition of law as laid down in the case of **Kishan Gopal and another Vs. Lala and others**, *2013(5) Law Herald (SC) 4346* wherein the notional income of the child was taken as Rs.30,000/-. Reference is also made to the second schedule provided under Section 163-A of the Motor Vehicle Act qua the fatal accident resulting in death cases to be taken as maximum Rs.5 lacs who is not earning.

A perusal of the judgment rendered in the case of Kishan Gopal's case (supra) shows that the said accident pertained to the year 1992. Taking the date of the accident, learned Single Judge of this Court in the case of Sunita Devi (supra) held Rs.50,000/- to be the fair income to be assessed of a child who is 15 years old. The discussion in the said case while taking the notional income as Rs.50,000/-, it was observed in para No.8 as under:-

> "Reference can also be made to a latest judgment of this Court in the case of ***Beet Nath and another vs. Gulab Singh and others (FAO No.159 of 2015)*** decided on ***July 10, 2017***, wherein the notional income of the child who died in an accident which took place in the year 2012 was taken as Rs.50,000/-. It was observed in that case that in the case of ***Kishan Gopal and another vs. Lala and others, 2013 (4) RCR (Civil) 276***, wherein the notional income of a 10 years old child was taken as Rs.30,000/-, the year of the accident was 1992. But in that case, the accident had taken place in the year 2012 and the age of the deceased at the time of the accident was 15 years. Since the value of rupee has come down drastically since the year 1992, the notional income in ***Beet Nath's case (supra)*** was taken as Rs.50,000".

No appeal seems to have been filed in either of the two cases i.e. neither in the case of Beet Nath or Sunita Devi's cases (supra). Even otherwise, nothing has been brought to the notice of this Court that the said order or judgment has been set-aside. This Court too is in agreement of the said opinion of the learned Single Judge that Rs.30,000/- was held as the notional income of a minor child who died in an accident which took place in the year 1992. The accident in the present case has taken place in 2013. The notional income of Rs.30,000/- cannot be equated with the falling value of the money as on date or in the year 2013.

In view of the same, this Court deems it proper to take the notional income as Rs.50,000/- per annum.

In view of the above, the appellants are entitled to the enhanced amount as per the calculation provided:-

| Sr. No. | Head | Amount assessed |
|---|---|---|
| 1 | Notional income | Rs.50,000/- per annum |
| 2 | Multiplier | (50,000/- x 15 = Rs.7,50,000) |
| 3 | Total | Rs.7,50,000/- |
| 4 | Compensation awarded by the Tribunal | Rs.2,25,000/- |
| 5 | Differences | Rs.5,25,000/- |

With respect to the appeal i.e. FAO-10626-2014 pertained to injury suffered by minor-Wasim, only Rs.20,000/- has been awarded, learned counsel for the appellant submitted that the amount awarded is on the lower side. It is stated that in case of Wasim, he was diagnosed to have suffered tiblal fracture and fracture of fibula but only Rs.10,000/- towards pain and suffering and Rs.500/- per day for 20 days stay in hospital. The said amount on the face of it is on the lower side and requires to be enhanced by another amount of Rs.10,000/- to be paid to the appellant in FAO-10626-2014.

Similarly, in the case of Habib-injured, he suffered fracture of distal and radious and only Rs.10,000/- were awarded towards pain and sufferings and Rs.500/- for two days stay in the hospital. The same too requires to be enhanced by another amount of Rs.10,000/- to be paid to the appellant in FAO-9574-2014.

Accordingly, the appeals i.e. FAOs-2339 and 106-2015 are allowed to the said extent. The enhanced amount of Rs.5,25,000/- each in both the appeals be deposited within two months from the receipt of certified copy of this order alongwith 6% interest from the date of the claim petition till realization.

Similarly, the appeals i.e. FAOs-9574 and 10626-2014 are allowed to the above extent. The enhanced amount of Rs.10,000/- each in both the appeals be deposited within two months from the receipt of certified copy of this order alongwith 6% interest from the date of the claim petition till realization.

However, in case the enhanced amount in all the appeals is not deposited within two months, the same shall thereafter be deposited alongwith interest @ 12% till payment after the expiry of two months.

**(NIRMALJIT KAUR)**
**JUDGE**

**September 03, 2019**
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|---|---|---|
| Whether speaking/reasoned. | : | Yes/No |
| Whether Reportable. | : | Yes/No |