

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

FAO No. 5190 of 2014 (O&M)
Date of decision: August 26, 2019

Seema & another

...Appellants

Versus

Bhim Singh and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Chetan Kapur, Advocate for
Mr. Ashish Gupta, Advocate
for the appellants.

Respondent No.1 ex parte.

Mr. Atul Yadav, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. This appeal seeks to challenge the award dated 02.12.2013 passed by the Motor Accident Claims Tribunal, Gurgaon (now Gurugram) wherein the appellants herein have been allowed compensation of ₹3,00,000/- on account of death of their son Akshay Kumar.

2. In brief, the facts are that on 26.09.2012, Surender son of Sh. Mahender Singh had taken his nephew Akshay Kumar towards bus stand, Khod as Akshay Kumar was to board school bus from bus stand, Khod. The offending bus of M.D. School, Gadaipur (respondent No.2) was being driven by its driver Bhim Singh (respondent No.1) in a rash and negligent

manner and it dashed against Akshay Kumar. After causing the accident, Bhim Singh fled away from the spot after leaving the bus (without number plate) on the road. Akshay Kumar died on the spot because of the injuries having sustained in the accident. Postmortem examination of dead body of Akshay Kumar was got done at General Hospital, Gurgaon. The matter was reported to the police vide FIR No.195 dated 26.09.2012 under Sections 279, 304-A of Indian Penal Code. Thereafter, claimants claimed compensation to the tune of ₹ 10 lacs with interest @ 18% per annum.

3. The claim petition was contested by the respondents, inter-alia, taking preliminary objections that no accident had taken place because of rash and negligent driving of respondent No.1. The bus bearing registration No.HR55-S-9910 was not the offending vehicle and no accident was caused with the said bus. Issues were framed and thereafter evidence was led by the parties.

4. After scrutiny of the evidence brought on record, the Tribunal held that the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it allowed compensation of ₹3,00,000/- which has been now challenged in the instant appeal.

5. Learned counsel appearing on behalf of the appellants argues that the Tribunal has erred in awarding compensation on account of death of an 8 years old child on the lower side, while further contending that the Supreme Court in ***Kishan Gopal and another vs. Lala and others, 2013(4) RCR (Civil) 276*** had assessed the notional income of a 10 years old child to

be ₹ 30,000/- per annum in respect of an accident which took place in the year 1992, which itself would enhance the compensation to be paid.

6. Per contra, learned counsel appearing on behalf of respondent No.2-Insurance Company urged that there is no infirmity in the award so passed and the compensation of ₹ 3,00,000/- has rightly been assessed.

7. I have heard learned counsel for the parties and have also gone through the case law regarding quantum of compensation to be assessed on the death of a minor child.

8. In the case of ***Lata Wadhwa and others vs. State of Bihar and others, 2001(4) RCR (Civil) 673*** the Supreme Court had observed that the income of a tender child could not be assessed based on any mathematical computation. In that particular case, compensation for the death of a minor in the age group of 11-15 years was assessed at ₹ 3,60,000/- with an additional sum of ₹ 50,000/- under the conventional heads by taking the computation to be ₹ 24,000/- per annum with the multiplier of 15. In a subsequent case reported as ***Kishan Gopal and another vs. Lala and others, 2013(4) RCR (Civil) 276***, the notional income of the child was taken to be ₹ 30,000/- and a multiplier of 15 was applied, which compensation was assessed at ₹ 4,50,000/- and another additional sum of ₹ 50,000/- was awarded under conventional heads i.e. loss of love and affection/funeral expenses and last rites etc. In the case of ***Lata Wadhwa and others (supra)*** the accident pertained to the year 1989 whereas, in the case of ***Kishan Gopal and another (supra)*** the accident was of the year 1992. In the case of ***Lata Wadhwa and others (supra)*** which was one of the foremost cases

pertaining to assessment of compensation on account of death of a minor child, the second schedule to Section 163-A of the Motor Vehicles Act was taken into consideration.

9. Clause 6 of the second schedule to Section 163-A of the Motor Vehicles Act, 1988 refers to notional income of those persons who had no income prior to the accident, as would be in the case of minor child having no established income. Clause 6 allows notional compensation of ₹ 15,000/- per annum to those who had no income prior to accident (non-earning person). However, subsequently in the case of ***Kishan Gopal and another (supra)*** the notional income was enhanced to ₹ 30,000/- per annum, with a multiplier of 15 to be applied by relying upon the principles as settled in ***Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 121.*** However, in the case of ***Puttamma and others vs. K.L. Narayana Reddy and another, 2014(1) RCR (Civil) 443*** it has been observed by the Supreme Court that Second Schedule to Section 163-A of the Act was enacted w.e.f. 14.11.1994 had become redundant and unworkable due to the enhanced cost of living, current rate of inflation and increased life expectancy, however, it was left to the wisdom of the Legislature to make the necessary amendment.

10. Therefore taking the view, that second schedule which was the basis of determining the notional income as per clause 6, pertained to the year 1994 when the cost of living and GDP index allowed a person to survive on a meager amount, the notional income can certainly be increased. With the passage of time, the cost of living has increased substantially. The State Government regularly enhances the minimum wages once in a year or

some times twice. Even the Central Government enhances the dearness allowance of its employees after every six months. So, there can be no reason for not enhancing the notional income on the same principle, considering the fact that cost of living has increased many fold since 1994 and buying power of the rupee is diminishing. Taking all these aforesaid factors into account, the notional income of the deceased is enhanced to ₹ 50,000/- per month. After applying the multiplier of 15 in terms of the judgment of the Supreme Court in *Sarla Verma vs. Delhi Transport Corporation(supra)* the compensation comes to ₹ 7,50,000/-. After adding a sum of ₹ 50,000/- under the conventional heads, it comes to ₹ 8,00,000/-

11. As a sequel of my discussion above, the appeal is allowed. The award of the Tribunal is modified and the total compensation payable to the claimants shall be ₹ 8,00,000/- and the amount in excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment. The claimants will share the amount of compensation as per the award of the Tribunal.

August 26, 2019

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
No