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

1. FAO No. 5830 of 2014

Reliance General Insurance Co. Ltd. ...Appellant

Versus

Jasvir Singh and others ...Respondents

2. FAO No. 3133 of 2015

Seema and others ...Appellants

Versus

Kuldeep Raj and others ...Respondents

Date of decision:- 25.09.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Paras Money Goyal, Advocate
for the appellant in FAO No. 5830 of 2014 &
for respondent No. 3 in FAO No. 3133 of 2015

Mr. R.K. Shukla, Advocate
for respondent Nos. 1 to 2 in FAO No. 5830 of 2014 &
for the appellants in FAO No. 3133 of 2015

RITU BAHRI J. (Oral)

C.M. No. 9380-CII-2015 in FAO No. 3133-2015

For the reasons mentioned in the application, delay of 264 days in filing of the appeal is hereby condoned.

The application stands disposed of accordingly.

FAO No. 5830-2014 and 3133-2015

1. Two appeals, as noticed above, are being disposed of by this common judgment, having arisen out of the impugned award dated 03.03.2014 passed by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib (herein after to be referred as 'the Tribunal').

Facts not in dispute

2. On 10.12.2011, appellants along with their son Vanshdeep Singh aged 02 years (since deceased) were coming from Patiala to village Kanthal on the motorcycle bearing no. PB-23-C-6279 whereas Vikram Singh @ Vickey was following them on his separate motorcycle No. PB-11-AB-9907. When they reached just in front of school of village Rohar Jagir, then canter bearing No. PB-11-AT-8838 came from the side of village Rohar Jagir driven by respondent No. 1 at a high speed in a rash and negligent manner and hit against the motorcycle driven by Jasvir Singh (father of the deceased). All the claimants received serious injuries and were admitted to Rajindra Hospital, Patiala whereas Vanshdeep Singh died at the spot. F.I.R No. 152 dated 10.12.2011 under Sections 279/337/304-A IPC registered at Police Station Julkan against respondent No. 1

COMPENSATION ASSESSED BY THE TRIBUNAL

3. While assessing compensation, the Tribunal took the income of the father of the deceased at Rs.6024/- per month and 1/2 was deducted towards personal expenses and thereafter, applied the multiplier of 17, in view of ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77.*** Rs.30000/- were awarded towards funeral expenses and last ceremony and Rs.25,000/- were awarded towards loss of love and affection. Further Rs.2,03,216.38 were awarded as standard compensation. The total compensation awarded to the claimants was Rs.08,72,664/-.

4. Feeling dissatisfied with the impugned award, the claimant as well as Insurance Company have preferred their separate appeal.

Arguments Advanced

5. The learned counsel for the claimant-appellant contends that the compensation awarded by the learned Tribunal in claim petition No. 33 of 2012 is on the lower side and deserves to the enhanced, as the appellants have received multiple injuries and the learned Tribunal should have applied multiplier method.

6. On the other hand, the learned counsel for the appellant-Insurance Company has vehemently opposed the present appeal and contends that the impugned award is liable to be modified as the learned Tribunal has erred in law by calculating the amount of compensation of 02 year old child on the basis of minimum wages criteria though the notional income should have been the criteria.

7. Heard learned counsel for the parties at length.

8. Both the appeals are liable to be dismissed as reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of ***"Kishan Gopal Vs. Lala and others 2013 AIR SC (Civil) 2465, (2001) 8 SCC 197"*** wherein in a case of death of child aged 10 years, Hon'ble the Supreme Court took the notional income of the deceased at Rs.30,000/- and applied the multiplier of 15 and the compensation came to Rs.4.50 lacs, Rs,50,000/- was given towards loss of love and affection, funeral expenses, last rites etc. Hon'ble the Supreme Court while dealing with a case filed under Section 163-A of the Motor Vehicles Act laid criteria for awarding the compensation in a case filed under Section 163-A of the Motor Vehicle Act. Hon'ble the Supreme Court in para 18 of the judgment has held as under:-

> *"18. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act,*

at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states 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. 2001 (4) RCR (Civil) 673: 2001 (8) SCC 197****, while examining the tortuous liability of the tort-feasor 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 irrecusable 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 vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77: 2009 (3) Recent Apex Judgment (RAJ) 373: (2009) 6 SCC 121***, 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 1994(2) SCC 176****, 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."*

9. 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.

10. 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 2012 and the age of the deceased at the time of the accident was 02 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/-.

11. With regard to the appeal filed by the claimants, it is also liable to be dismissed as the learned Tribunal has rightly awarded them compensation on the basis of evidence led by the parties.

12. The appeals are dismissed.

25.09.2019 (***RITU BAHRI***)
G Arora ***JUDGE***

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