

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

Date of Decision: 11.02.2019

1. FAO No. 7430 of 2015 (O&M)

Ram Kali Devi and another

..... Appellants

VERSUS

Anil Kumar and another

..... Respondents

2. FAO No. 7907 of 2015 (O&M)

Sushma

..... Appellant

VERSUS

Anil Kumar and another

..... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sushil Bhardwaj, Advocate,
for the appellant(s).

Mr. Ashwani Talwar, Advocate,
for respondent No.2-Insurance Company.

JAISHREE THAKUR, J.

1. This order of mine shall dispose of above referred two
sets of appeals, which have been filed seeking to challenge the award

dated 02.07.2015 passed by the Motor Accident Claims Tribunal, Karnal, on the ground that the compensation that has been assessed is on the lower side.

2. The only question involved in these two appeals is regarding enhancement of compensation on account of death of two minor children, namely Shalu and Mamta. It is an admitted fact that deceased Shalu daughter of Sushma was aged 06 years whereas Mamta daughter of Ram Kali was aged 14 years.

3. In brief, the facts are that an accident took place on 11.10.2013 with car No. HR-99-QXHATP-6113 in which Mamta daughter of claimants Ram Kali Devi and Prem Dutt (in FAO No. 7430-2015) Sushma wife of Anil Kumar appellant (in FAO No. 7907-2015) along with her son Lakshay aged 04 years, daughter Shalu aged 06 years as well as Pooja, her minor son, were travelling. The car was driven by Anil Kumar, husband of Sushma and when they reached near Lather brick-kiln, suddenly an animal, namely Nilgai came in front of the car and he in order to save the animal lost balance of the car and it struck against a tree. The claimant-appellant, namely Sushma sustained leg injury which made her permanently disabled. Her daughter, namely, Shalu suffered grievous injuries and succumbed on the way to the hospital whereas her son Lakshay remained as indoor patient for ten days due to serious, multiple and grievous injuries especially head injury suffered in the accident. A

DDR was also registered in this respect. Thereafter, claim petitions were filed and the statement of the claimants were recorded therein. No evidence was led by the respondent-owner controverting the evidence of the claimant. On the basis of the statement adduced, the Tribunal held that the factum of accident was established on account of which two persons died and the claimants Sushma and Ram Kali were allowed compensation as under :-

(i) In the case of claimant-Ram Kali and Prem Dutt on account of death of their daughter Mamta

The notional income of Mamta aged 14 years has been assessed at ₹ 24,000/- per annum based on the guidelines enunciated by Hon'ble Apex Court in cases of *R.K. Malik vs. Kiran Pal, (2009) 14 SCC 1* and in the case of *Late Wadhwa and others vs. State of Bihar and others, II (2001) ACC 316*. The Tribunal fixed a cut of 50% on the surviving claimants and applied a multiplier of 14 to the annual surviving dependency of ₹ 12,000/- and fixed an amount of ₹ 1,68,000/- as compensation, apart from giving ₹ 4,500/- towards funeral expenses and ₹ 30,000/- towards loss of love and affection. In all, the claimant Ram Kali was held entitled to a sum of ₹ 2,02,500/- as compensation.

(ii) In the case of claimant-Sushma on account of death of her daughter Shalu

The notional income of deceased Shalu aged 06 years has been assessed at ₹ 24,000/- per annum based on the guidelines

enunciated by Hon'ble Apex Court in cases of ***R.K. Malik vs. Kiran Pal, (2009) 14 SCC 1*** and in the case of ***Late Wadhwa and others vs. State of Bihar and others, II (2001) ACC 316***. The Tribunal fixed a cut of 50% on the surviving claimants and applied a multiplier of 17 to the annual surviving dependency of ₹ 12,000/- and fixed an amount of ₹ 2,04,000/- as compensation, apart from giving ₹ 4,500/- towards funeral expenses and ₹ 30,000/- towards loss of love and affection and non pecuniary loss. In all, the claimant Sushma was held entitled to a sum of ₹ 2,38,500/- as compensation.

4. Learned counsel appearing on behalf of the appellants herein relies upon a judgment rendered in ***Puttamma and others v. K.L.Narayana Reddy and others v. K.L.Narayana Reddy and another, 2014(1) RCR (Civil) 443***, wherein it had been observed that the Second Schedule to Section 163-A of the Act was enacted by Act 54 of 1994 w.e.f. 14.11.1944, but in spite of 19 years having passed by, no amendment in the same has been made by the Central Government. It was further held that the Second Schedule as enacted in 1994 has become redundant, irrational and unworkable due to enhanced cost of living, current rate of inflation and increased life expectancy.

5. Reliance has also been placed upon a judgment rendered by the Hon'ble Apex Court in ***Kishan Gopal and another v. Lala and others, 2013(4) RCR (Civil) 276***, wherein the notional income of a

child who died at the age of 10 years at the time of accident, taken to be ₹ 30,000/- and the multiplier of 15 had been applied and ₹ 50,000/- had been awarded under the conventional heads i.e. loss of love and affection, funeral expenses and last rites. Based on these judgments and the judgment rendered by this Court in ***FAO No. 5 of 2008*** titled as ***Amandeep Singh vs. The Oriental Insurance Company Limited and others***, decided on 11.09.2014 learned counsel for the appellants urges that the amount of annual income assessed at ₹ 24,000/- is on the lower side and it should be taken as ₹ 30,000/-.

6. By applying the dictum as laid down by the Hon'ble Supreme Court in ***Puttamma and others'*** case and ***Kishan Gopal's*** case (supra), in the present case also, the notional income would be taken as ₹ 30,000/-. The multiplier applied by the Tribunal of 14 & 17, respectively in both the cases is considered appropriate. The compensation, as such, would work out to ₹ 30,000 x 14 = ₹ 4,20,000/-(in the case of claimant-appellant Ram Kali and Prem Dutt) and ₹ 30,000 x 17 = ₹ 5,10,000/-(in the case of claimant-appellant Sushma).

7. In the impugned award dated 02.07.2015, passed by the Motor Accident Claims Tribunal, Karnal, the amount that has been assessed and granted under the conventional heads of loss of love and affection is ₹ 30,000/- and a frugal amount of ₹ 4,500/- has been

awarded for funeral expenses in both the cases. A lump sum amount of ₹ 1 lac each in both the appeals under the conventional heads of loss of love and affection, funeral expenses and last rites is considered appropriate and I award the same.

7. The present appeals are allowed and the compensation awarded is enhanced as under :

(i) **In the case of claimants-Ram Kali and Prem Dutt on account of death of their daughter Mamta (FAO-7430-2015)**

The compensation, as such, would work out to

$$₹ 30,000 \times 14 = 4,20,000 + 1,00,000 = ₹ 5,20,000/-$$

and consequently the compensation awarded is enhanced from ₹ 2,02,500/- to ₹ 5,20,000/-.

(ii) **In the case of claimant-Sushma on account of death of her daughter Shalu**

The compensation, as such, would work out to

$$₹ 30,000 \times 17 = 5,10,000 + 1,00,000 = ₹ 6,10,000/-$$

and consequently the compensation awarded is enhanced from ₹ 2,38,500/- to ₹ 6,10,000/- .

The term as regards interest as laid down by the learned Tribunal would remain the same.

8. The Insurance Company is directed to release the enhanced compensation in favour of the claimants/present appellants.

9. Appeal are allowed in the aforesaid terms.

10. A photocopy of this order be placed on the file of the connected case.

11.02.2019

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.