

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

F.A.O No. 16166 of 2018

Date of decision:- 15.11.2019

Guru Dutt Sharma and anr.

...Appellants

Versus

Mohinder Chahal and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Naveen Siwach, Advocate
for the appellants

Mr. M.B. Jain, Advocate
for respondent No. 3-Insurance Co.

RITU BAHRI J. (Oral)

1. The present appeal has been preferred by the claimants/appellants, against award dated 10.08.2018 passed by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') under Section 166 of the Motor Vehicles Act whereby the claimants have been awarded compensation to the tune of Rs.3,00,000/-.

FACTS NOT IN DISPUTE

2. On 30.04.2016, Vikram Singh was sitting in his shop at Bus stand village Guhna. The bus of Akhil Bhartiya Public School was alighting the children. When his niece Rakshia (since deceased) was alighting, the driver of the bus drove the bus in a high speed, due to which she fell down on the road and received multiple injuries. Due to the injuries, Rakshita become unconscious and was taken to General Hospital, Kaithal, where doctor declared her dead.

3. However, the learned Tribunal has awarded the lumpsum compensation of Rs.3,00,000/- to the appellants keeping in view the fact

that the deceased was 4 ½ years of age at the time of accident.

4. The learned counsel for the claimant-appellant contends that the learned Tribunal has erred in law in granting the lump sum compensation of Rs.3,00,000/- to the claimants.

5. Learned counsel for the appellant has relied upon judgment of Hon'ble the Supreme Court of India in a case of ***Puttamma and others vs. K.L. Narayna Reddy and another, 2014 (1) R.C.R (Civil) 443*** wherein in a claim petition filed under Section 163-A of the Motor Vehicle Act, it has been held that the structured formula as prescribed under Second Schedule and the multiplier mentioned therein is not binding for claims under Section 166 of the Act, 1988

6. On the other hand, learned counsel for the respondent-Insurance Company has opposed the prayer made by the appellant.

7. I have heard learned counsel for the parties and perused the record.

8. 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***” 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, $30,000 \times 15 = 4,50,000$ 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 2016 and the age of the deceased at the time of the accident was 4 ½ years. Since the value of rupee has come down drastically since the year 1992, the notional income can safely be taken as Rs.40,000/-. The compensation is being reassessed as per the judgments mentioned above:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Notional Income	Rs.40000/- per annum
(ii)	Compensation after multiplier of 15 is applied	Rs.40000 X 15= Rs.06,00,000/-
(iii)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Total Compensation awarded	Rs.06,30,000/-
	Enhanced amount of compensation	Rs.06,30,000-Rs.03,00,000=Rs.3,30,000/-

11. The enhanced amount of compensation of Rs.3,30,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% per annum in view of judgment of Hon'ble the Apex Court in Civil Appeal No. 4528-2019 titled as *Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019*. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

12. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

15.11.2019

G Arora

(RITU BAHRI)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes

No