IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-889-2002 (O&M)
Date of Decision: November 16, 2022

Satish Chand and another

....Appellants

Versus

Aash Mohammad and others

.....Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr. Ashish Gupta, Advocate for
Mr. Sandeep Jasuja, Advocate
for the appellants.

Mr. Suman Jain, Advocate
for respondent No.4-Insurance Company.

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ARCHANA PURI, J

The present appeal has been filed by the appellants/claimants-Satish Chand Jain and Santosh Kumari, challenging the Award dated 20.04.2000, passed by learned Motor Accident Claims Tribunal, on account of death of their son, namely, Chander Sain Jain, on 29.05.1998, in a motor vehicular accident, while he was on his cycle. His cycle was hit by a Tempo bearing registration number HR-38-A-1872.

On perusal of the evidence adduced, learned Motor Accident Claims Tribunal, had awarded compensation to the extent of Rs.1,05,800/- to the appellants.

Being dissatisfied with the awarded amount, the appellants/claimants have filed the present appeal for seeking enhancement of compensation.

So far as, the fact of accident and manner of its taking place as well as the liability of the driver, owner and insurer of the offending vehicle, to be joint and several, are concerned, it is pertinent to mention that no appeal has been filed by the persons, so made liable, to challenge the Award and thus, findings so arrived, have attained finality.

In this backdrop, learned counsel for the appellants/claimants submits that the deceased Chander Sain Jain was 14 years old, at the time of accident and he was the student of 7th class. He used to help his father at the shop and his monthly earnings were around Rs.1,000/-. Therefore, the compensation, so awarded, by learned Tribunal, is on a lesser side, which requires extensive enhancement.

On the other hand, learned counsel for the Insurance company has refuted the claim of the appellants/claimants, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon and thus, he submits that the appeal sans merit and deserves to be dismissed.

Reverting to the computation of compensation, in the facts of this case, a child died in a road accident, at the age of 14 years. He was student of 7th class, at the relevant time. In these circumstances, it is required to be seen, how the computation of compensation, may be made. It has been submitted that the deceased child was a brilliant student of 7th class and had he not met with the accident, he would have been well settled in his life.

It is pertinent to mention that Hon'ble Supreme Court in case titled as ***'Kishan Gopal and another v/s Lala and others, 2013(4) RCR (Civil) 276'***, while considering the death of a child, aged 10 years took the notional income of the deceased as Rs.30,000/- and applied multiplier of **'15'** and compensation came to be Rs.4.5 lakh. Rs.50,000/- was given towards love, affection, funeral expenses and last rites. The accident in that case, related to the year 1992.

Even, Hon'ble Supreme Court in case titled as ***"Kurvan Ansari alias Kurvan Ali and another v/s Shyam Kishore Murmu and another, Civil Appeal No.6902 of 2021 decided on 16.11.2021"*** was considering the case of death of 7 years old child, in a motor vehicular accident, which took place in the year 2004 and made certain observations, which are as under:-

> *"11. As the claim was made under Section 163-A of the Motor Vehicles Act 1988, since the deceased child was not an earning member, the Tribunal has considered notional income as per Schedule–II for the purpose of fixing compensation. The Tribunal has awarded compensation by taking notional income of the deceased at Rs.15,000/- per annum by applying multiplier '15', awarded compensation of Rs.2,25,000/- towards loss of dependency with interest @ 6% per annum from the date (2009) 14 SCC 1 (2014) 1 SCC 244 (2020) 7 SCC 256 of judgment. When the appeals are preferred by the Insurance Company as well as the appellants herein, by the impugned common judgment, the High Court has dismissed the appeal preferred by the Insurance Company, and in the appeal preferred by the claimants, while confirming the compensation awarded for loss of dependency at Rs.2,25,000/-, has awarded a further sum of Rs.15,000/- towards funeral expenses and accordingly granted a total compensation of Rs.2,40,000/- with interest @6% per annum payable by respondent No.2 - Insurance Company and by permitting it to recover the same from Respondent No.1 - owner of the motorcycle.*
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> *12. In the judgment in the case of Puttamma & Ors., this Court has observed that the Central Government was bestowed with the duties to amend Schedule-II in view of Section 163A(3) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule-II*

keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs.1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) for the non- earning persons of more than 5 (five) years old.

13. In the case of R.K. Malik & Anr. also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988 as Rs.15,000/- per annum should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In the case of Kishan Gopal & Anr. where the deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.

14. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non- earning members is not just and reasonable.

15. In view of the judgments in the cases in Puttamma & Ors., R.K. Malik & Anr. and Kishan Gopal & Anr., we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors. relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company."

In view of the aforesaid observations, the Court took the notional income of the deceased child as Rs.25,000/- per annum and applied multiplier of '15' as prescribed in Schedule-II, for the claims under Section 163A of the Motor Vehicles Act, 1988 and worked upon the amount as Rs.3.75 lakh towards the loss of dependency. Besides the same, Rs.40,000/- each was given to the claimants, who were two in number, towards filial consortium and Rs.15,000/- was given towards funeral expenses. The total compensation was worked upon as Rs.4,70,000/-.

In the latest authority on the subject titled ***'Meena Devi v/s Nunu Chand Mahto @ Nemchand Mahto and others, 2022(4) RCR (Civil) 553'*** the Hon'ble Supreme Court had considered the case of death of 12 years old child, in a motor vehicular accident and while granting compensation had observed that the principle laid down in case of ***Kishan Gopal's case (supra)***, are aptly applicable to the facts of the case (in hand), and thus, took the notional earnings as Rs.30,000/- including future prospects and applying the multiplier of **'15'** in view of the decision of the Court passed in ***"Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77'***, the loss of dependency was worked upon to be Rs.4,50,000/- and addition of Rs.50,000/- was made in conventional head and thus, the total compensation was worked upon as Rs.5,00,000/-

Considering the aforesaid, now reverting to the case in hand. Be it noted that the Insurance company had not challenged the Award. The accident in the case, in hand, had taken place on 29.05.1998 and also considering the date of death in ***Kishan Gopal's case (supra)***, the value of rupee has come down drastically.

Taking into consideration, all the aforesaid factors, the notional income, in the case, in hand, can safely be taken to be Rs.30,000/- per month. Thus, considering the age of the parents, the multiplier to be applied in the case, in hand, as per guidelines laid down in ***Sarla Verma's case (supra)***, is '**15**' and so calculating, the loss of dependency comes to be Rs.4,50,000/-.

Besides the aforesaid, amounts are to be paid on conventional heads, namely, loss of estate, loss of consortium and funeral expenses as held in ***'National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009'***. In ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, the concept of consortium, has been dilated in detail, wherein, it has been held that filial consortium is the right of the parents to compensation, in case of accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for the parents is to lose their children for lifetime. Children are valued for their love, affection, companionship and their role in the family unit. Therefore, on account of filial consortium also, compensation is to be granted.

In ***Pranay Sethi's case (supra)***, the extent of consortium which should be paid is stated to be Rs.40,000/-, for the loss of estate, it is Rs.15,000/- as well as for the funeral expenses, it is Rs.15,000/- and these findings have been further endorsed by the Hon'ble Supreme Court in the case titled as **'*The New India Assurance Company Limited v/s Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020*'**. It was further held in ***Pranay Sethi's case (supra)*** that the aforesaid amount should be enhanced by 10% after every three years. As the said judgment is dated 31.10.2017, so there has to be enhancement of 10% in each of these conventional heads, which comes to be Rs.44,000/- as filial consortium, which is to be paid to each of the parent, Rs.16,500/- as loss of estate and Rs.16,500/- as funeral expenses. The loss of dependency comes to be Rs.4,50,000/-, filial consortium of Rs.44,000/- to each of the appellant/claimant comes to be Rs.88,000/-. Therefore, the total comes to Rs.5,71,000/-.

The learned Tribunal had granted the interest at the rate of 12% per annum from the date of presentation of the petition till payment of the amount. However, the interest rate has reduced drastically, hence thereafter. Keeping in view the same, for the enhanced amount, the appellants-claimants shall be entitled to the interest, at the rate of 8% per annum, from the date of filing of the appeal, till realization of the enhanced amount.

With the above observations, the appellant's appeal stands allowed. The impugned Award dated 23.07.2012 stands modified, to the extent, as indicated aforesaid.

November 16, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

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