

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **FAO No.2350 of 2013 (O&M)**

Kanishka Narang and another
...Appellants

VERSUS

Harbhajan Singh and others
...Respondents

(ii) **FAO No.2351 of 2013 (O&M)**

Kanishka Narang and another
...Appellants

VERSUS

Harbhajan Singh and others
...Respondents

(iii) **FAO No.2352 of 2013 (O&M)**

Kanishka Narang and another
...Appellants

VERSUS

Harbhajan Singh and others
...Respondents

(iv) **FAO No.4282 of 2013 (O&M)**

National Insurance Co. Ltd.
...Appellant

VERSUS

Kanishka Narang and others
...Respondents

(v) **FAO No.4283 of 2013 (O&M)**

National Insurance Co. Ltd.
...Appellant

VERSUS

Kanishka Narang and others
...Respondents

(vi)

FAO No.4529 of 2013 (O&M)

Kanishka Narang and another

...Appellants

VERSUS

Harbhajan Singh and others

...Respondents

Date of Decision: January 27, 2022

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Neeraj Khanna and Mr.Ravinder Arora, Advocates,
for the appellants-claimants.

Mr.Paul S. Saini, Advocate
for the appellants-Insurance company.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of the COVID-19 pandemic.

These are six appeals filed to challenge the Award dated 17.12.2012. Vide this Award, four claim petitions, which were consolidated, vide order dated 27.10.2009, were disposed of. Claim petitions No.116, 117 and 118 relate to deaths of Rajneesh Narang, Sonia Narang and Tanisha Narang respectively, whereas, claim petition No.119, relate to injuries sustained by Kanishka Narang, in a motor vehicular accident.

FAOs No.2350, 2351 and 2352 of 2013 have been filed by the claimants seeking enhancement of compensation, vis-a-vis, deaths of aforesaid three persons and also **FAO No.4529 of 2013** has been filed for seeking enhancement of compensation, vis-a-vis, injuries sustained by

Kanishka Narang, in a motor vehicular accident.

However, **FAOs No.4282 and 4283 of 2013** have been filed by the Insurance Company, thereby, asserting that compensation qua deaths of Rajneesh Narang and Sonia Narang, have been wrongly worked upon on higher side.

For the convenience of discussion, the parties are referred to as claimants and respondents, as making appearance before the learned Tribunal.

As per the version of the claimants, on 01.12.2008, Rajneesh Narang along with his wife Sonia Narang and daughters, namely Kanishka and Tanisha, was coming back from Gurdaspur to Chandigarh via Hoshiarpur in his TATA Indica Car bearing No.CH-03P-0584, after attending marriage. When they reached at Tanda road at village Assalpur, Police Station Sadar, Hoshiapur, at about 1.15 p.m., a truck bearing registration No.PIA-9092, being driven by respondent No.1-Harbhajan Singh, in a rash and negligent manner, came from the front side and hit their Indica Car. As a result of this accident, Kanishka sustained serious injuries, whereas, Rajneesh Narang, Sonia Narang and Tanisha, had died in the accident. FIR No.268 dated 01.12.2008 under Sections 279, 338, 304-A and 427 IPC, Police Station Sadar, Hoshiarpur, was registered against respondent No.1-Harbhajan Singh.

Further, in the respective claim petitions, it is also asserted that Rajneesh Narang (since deceased) was 38 years old and he was running a business under the name and style of Axxess Overseas Consultant and Mastek Computer Business, thereby earning Rs.5 lakh per annum. Likewise, Sonia Narang was stated to be 31 years old, on the date of accident and she was also running a business under the name and style of

Axcess Overseas Consultant and Mastek Computer Business along with her husband, thereby earning Rs.3 lakh per annum. Rs.1 lakh was spent on her treatment.

Further, it is asserted that Tanisha was 4 years old, at the time of accident and was studying in Sacred Heart Senior Secondary School, Chandigarh and a sum of Rs.50,000/- was spent on her treatment.

Kanishka Narang was 9 years old, at the time of accident and she was also studying in Sacred Heart Senior Secondary School, Chandigarh. She sustained multiple grievous injuries and was treated in DMC Hospital, Ludhiana, Chaitanya Hospital, Chandigarh, Viridi Eye Hospital, Chandigarh and Fortis Hospital, Mohali. A sum of Rs.2.5 lakh was incurred on her treatment.

In view of these assertions, compensation sought by the claimants is to the extent of Rs.60 lakh, Rs.50 lakh, Rs.30 lakh and Rs.30 lakh, respectively, in all the claim petitions.

In reply, respondent No.1, who is owner and driver of the truck bearing No.PIA-9092, denied the accident in toto. Respondents No.2 and 3-National Insurance Company pleaded in the reply that respondent No.1 was not holding valid and effective driving licence to drive the truck, at the relevant time and the truck was being plied against the terms and conditions of the insurance policy. Though, the accident, as such, has been denied but however, it was pleaded that driver of the offending truck, was not negligent. Even, the amount of compensation claimed, was also asserted to be excessive.

From the pleadings of the respective cases, issues were framed.

1. *Whether accident in question took place on account of rash and negligent driving of vehicle bearing No.PIA-9092 by respondent No.1, if so, whether Rajneesh Narang died due to injuries suffered by him in the accident in question?OPP*
2. *If issue No.1 is decided in favour of claimants, whether claimants are entitled for any compensation, if so, how much and from whom?OPP*
3. *Whether the respondent No.1 was not holding valid and effective driving licence at the time of accident, if not, its effect?OPR-3*
4. *Relief.*

In MACT case No.117 of 2009, following issues were framed:-

1. *Whether accident in question took place on account of rash and negligent driving of vehicle bearing No.PIA-9092 by respondent No.1, if so, whether Sonia Narang died due to injuries suffered by her in the accident in question?OPP*
2. *If issue No.1 is decided in favour of claimants, whether claimants are entitled for any compensation, if so, how much and from whom?OPP*
3. *Whether the respondent No.1 was not holding valid and effective driving licence at the time of accident, if not, its effect?OPR-3*
4. *Relief.*

In MACT case No.118 of 2009, following issues were framed:-

1. *Whether accident in question took place on account of rash and negligent driving of vehicle bearing No.PIA-9092 by respondent No.1, if so, whether Tanisha Narang died due to injuries suffered by her in the accident in question?OPP*
2. *If issue No.1 is decided in favour of claimants, whether claimants are entitled for any compensation, if so, how much and from whom?OPP*
3. *Whether the respondent No.1 was not holding valid and effective driving licence at the time of accident, if not, its effect?OPR-3*

4. *Relief.*

In MACT case No.119 of 2009, following issues were framed:-

1. *Whether accident in question took place on account of rash and negligent driving of vehicle bearing No.PIA-9092 by respondent No.1, if so, whether Kanishka suffered injuries in the accident in question?OPP*
2. *If issue No.1 is decided in favour of claimants, whether claimants are entitled for any compensation, if so, how much and from whom?OPP*
3. *Whether the respondent No.1 was not holding valid and effective driving licence at the time of accident, if not, its effect?OPR-3*

4. *Relief.*

In an endeavour to establish their case, Mohinder Singh Narang-claimant No.2, himself stepped into witness box as PW-1 and also examined Sahinder Singh as PW-2, besides adducing documentary evidence. However, respondents did not lead any oral evidence and they have only tendered documentary evidence.

Learned Tribunal, after considering the evidence, brought on record, came to the conclusion that accident took place due to rash and negligent driving of the truck bearing No.PIA-9092, driven by respondent No.1-Harbhajan Singh, as a result whereof, death of Rajneesh Narang, Sonia Narang and Tanisha had taken place and Kanishka had sustained injuries. **This conclusion, as such, is not disputed by either of the parties in the respective appeals.** Even, fact of age of deceased Rajneesh Narang to be 38 years, Sonia Narang to be 32 years, Tanisha to be 5 year and Kanishka to be 9 years, at the relevant time, as such, also stand established from the evidence adduced.

However, aforesaid appeals have been filed to challenge the

extent of compensation awarded by the Tribunal. Claimants in their respective appeals, have asserted compensation to have been calculated on lower side, whereas, Insurance Company in its appeals, asserted the compensation qua death of Rajneesh Narang and Sonia Narang, to have been worked upon higher side.

At this juncture, it is pertinent to mention that during the pendency of the appeals, in pursuance of the applications filed, to place on record, income tax returns record, it was observed that **learned counsel for the Insurance Company and the claimants are *ad idem* that income tax returns of the deceased (Rajneesh Narang and Sonia Narang) for the assessment years 2007-2008, 2008-2009 and 2009-2010, are extremely relevant and necessary, for just adjudication of the matter.** Thus, the claimants were permitted to lead evidence, in respect to the income tax returns for the assessment years 2007-2008, 2008-2009 and 2009-2010. The matter was reverted to the Tribunal to record the evidence of the rival parties and to submit report. Subsequent thereto, learned Tribunal examined CW-1/A Rajan Arora, Clerk, Income Tax Department, who proved the income tax returns of Rajneesh Narang for the assessment year 2007-2008 Ex.CW1/1, 2008-2009 Ex.CW1/2 and 2009-2010 Ex.CW1/3. However, no evidence was led by the Insurance Company and said witness was examined again and separate income tax returns of the same period relating to Sonia Narang were proved as Ex.CW1/1, Ex.CW1/2 and Ex.CW1/3 for the aforesaid respective assessment years and qua her income tax returns also, no evidence was led by the Insurance Company.

FAOs No.2350 and 4282 of 2013 relating to MACT No.116 of 2009

assiduously submitted that learned Tribunal has wrongly worked upon the earnings of deceased Rajneesh Narang and granted compensation of Rs.61,69,360/-, which is on lower side. It is submitted that learned Tribunal has wrongly deducted income tax from the earnings of the deceased to the extent of Rs.1,33,827/-, whereas, tax payable, as evident, is to the extent of Rs.56,058/- only and this amount was only required to be deducted. Besides the same, also it is submitted that as per the judgment passed by the Five Judges' Constitution Bench of the Hon'ble Supreme Court in ***Special Leave Petition (Civil) No.25590 of 2014 titled as National Insurance Company Limited vs. Pranay Sethi and others, decided on 31.10.2017***, the amount, on account of funeral expenses, is also on lower side. No amount for loss of estate, as such, has been awarded. Even, it was required to give compensation, on account of parental consortium also.

On the other hand, it is submitted by learned counsel for the Insurance Company that learned Tribunal fell in error, while awarding whopping sum of Rs.61,69,360/- to the claimants. It has wrongly relied upon the receipt Ex.C5, which is only acknowledgment receipt of income tax return of 2009-2010, which was filed after eight months, from the date of death of Rajneesh Narang. It is submitted that when the returns, proved in the report received from learned Tribunal, during the pendency of the appeal, are taken into consideration, then it is evident that in Ex.CW1/1, which related to the year 2007-2008, the earnings of deceased Rajneesh Narang were Rs.1,98,140/- and taxable income was Rs.98,140/- and in the next income tax return Ex.CW1/2 for the assessment year 2008-2009, the income of the deceased was Rs.2,73,020/-, whereas in Ex.C5 i.e. income tax return for the assessment year 2009-2010, which was filed eight months

after his death, his income inflated to Rs.4,99,842/-. Thus, an exaggerated amount has been worked upon, on the basis of Ex.C5.

Learned Tribunal, on the basis of Ex.C5, had taken the income of deceased Rajneesh Narang as Rs.4,99,842/- and gave increase of 50% i.e. Rs.2,49,921/- per annum and in this manner, worked the income of deceased as Rs.7,49,763/- per annum and deducted income tax, to the extent of Rs.1,33,837/- and after so deducting, income was taken as Rs.6,15,936/- per annum. Looking at the number of dependents, the cut of 1/3rd was applied and dependency was thus Rs.6,15,936 – Rs.2,05,312 = Rs.4,10,624/-. To this amount, multiplier of '15' was applied and dependency was worked upon as Rs.61,59,360/-. Besides the same, transportation and last rites expenses to the extent of Rs.10,000/- was given. Thus, the total compensation was worked upon as Rs.61,69,360/-.

Yes, as submitted, the calculation is wrongly worked upon. Firstly, coming to the earnings of deceased Rajneesh Narang. The Insurance Company has laid much emphasis upon the ITRs for the assessment years 2007-2008 Ex.CW/1 and 2008-2009 Ex.CW1/2 and to compare the same with ITR for the assessment year 2009-2010 Ex.CW1/3, to assert that exaggerated earnings are shown in the ITR filed after the death of Rajneesh Narang. However, this submission holds no ground. It is pertinent to mention that in Ex.CW1/1, earnings of the deceased were Rs.1,98,140/-. In subsequent year 2008-2009, the earnings were Rs.2,73,020/- and it shows that there was substantial increase in earnings. Thereafter, in the year 2009-2010, it was Rs.4,99,842/-. When opportunity was given before the Tribunal to lead evidence, during the pendency of the appeal, the Insurance

Company did not lead any evidence to rebut the earnings as shown in these

ITRs. No cross-examination was also conducted to dispute the earnings as shown in said ITRs. It should be noted that deceased Rajneesh Narang was in such age group, at the time of his death, when a person works passionately to earn a living, more particularly, it is to be seen, when there is substantial increase in his earnings, as evident from the income tax returns of two preceding years. Thus, in these circumstances, earnings for the assessment year 2009-2010 to be Rs.4,99,842/- cannot be concluded to be exaggerated one.

The Tribunal had deducted Rs.1,33,827/- as tax. However, it is pertinent to mention that tax worked upon in ITR Ex.CW1/3 is Rs.56,058/-. Therefore, this amount has to be deducted as it is the actual income minus tax, which is to be taken into consideration. Thus, it has to be Rs.4,99,842/- - Rs.56,058/- = Rs.4,43,784/-. The deceased was self-employed. Thus, considering him to be so, as held in *Pranay Sethi case(supra)*, there has to be 40% increase as future prospects instead of 50% as held by the Tribunal. In this regard, reference is also made to the judgment rendered by the Hon'ble Supreme Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram & Ors., 2018 (18) SCC 130*. Thus, 40% of Rs.4,43,784/- comes to Rs.1,77,513.6. Thus, the earnings by making addition of 40% to Rs.4,43,784, comes to Rs.6,21,297.6. Upon this extent of earnings, cut of 1/3rd is to be applied as personal expenses, which is to the extent of Rs.2,07,099.2. After deducting this amount, the extent of earnings comes to Rs.4,14,198.4. Considering the age of the deceased Rajneesh Narang, '15' is the multiplier, which is to be applied to work upon the loss of dependency and so, applying this multiplier, the loss of dependency is worked upon as Rs.62,12,976/-.

Besides the aforesaid, amounts are to be paid on conventional heads namely, loss of estate, loss of consortium and funeral expenses as held in ***Pranay Sethi's case (supra)***. In Magma General Insurance Co. Ltd. Case (supra), the concept of consortium has been explained as follows:-

"21. A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation." 21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." 21.3. Filial consortium is the right of the parents to compensation in the case of an 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 a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

23. The Motor Vehicles Act is beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium."

Thus, considering the same, since father of claimant No.1- Kanishka Narang had untimely death, in a motor vehicular accident, therefore, she is entitled to parental consortium. In *Pranay Sethi's case (supra)*, the extent of consortium, which should be paid, is stated to be Rs.40,000/-, for loss of estate it is Rs.15,000/- as well as for funeral expenses it is Rs.15,000/-. It was further held in the above-said case that the aforesaid amounts should be enhanced @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 parental consortium, Rs.16,500/- as loss of estate and Rs.16,500/- as funeral expenses.

In the light of aforesaid discussion, the compensation re-assessed is as follows:-

<i>Sr. No.</i>	<i>Head under which amount awarded</i>	<i>Amount</i>
1	Loss of dependency	Rs.62,12,976/-
2	Parental consortium	Rs.44,000/-
3	Loss of estate	Rs.16,500/-
4	Funeral expenses	Rs.16,500/-
	Total	Rs.62,89,976/-

FAOs No.2352 and 4283 of 2013 relating to MACT No.117 of 2009

So far as, compensation qua death of Sonia Narang is concerned, learned Tribunal, as reflected in acknowledgment receipt Ex.C/6, took earnings of deceased Sonia Narang as Rs.2,41,455/- and made addition of 50%, i.e. to the extent of Rs.1,20,728/- as future prospects and thus, worked upon the income of the deceased as Rs.3,62,183/-. Out of this amount, income tax to the extent of Rs.25,170/- was deducted and income was worked upon as Rs.3,37,013/-. Upon this amount, deduction of 1/3rd

was made and dependency worked upon as Rs.3,37,013 – Rs.1,12,338,

which comes to be Rs.2,24,675/-, to which, multiplier of '16' was applied and loss of dependency worked upon as Rs.35,94,800/-. Besides the same, further amount of Rs.10,000/- was given as expenditure incurred on transportation and last rites. Thus, total compensation was worked upon as Rs.36,04,800/-.

However, the manner of computation of compensation is palpably wrong, as observed in the earlier portion of the judgment. Learned counsel for the Insurance Company made submission that earnings of deceased Sonia Narang have been taken on higher side but however, as observed aforesaid, the claimants in additional evidence, during pendency of the appeal, proved income tax returns of Sonia Narang for the assessment years 2007-2008, which is Ex.CW1/1, 2008-2009, which is Ex.CW1/2 and 2009-2010, which is Ex.CW1/3. It shows that earnings of deceased Sonia Narang in Ex.CW1/1 was Rs.1,02,533/-. Then, for the assessment year 2008-2009 in Ex.CW1/2, her earnings were Rs.2,76,110/-. However, in Ex.CW1/3 for the assessment year 2009-2010, her earnings were Rs.2,41,460/-. Thus, it should be noted that keeping in view the income coming forth for the preceding two years, prior to her death, the last return reflects income as Rs.2,41,460/-, which is not on higher side. Besides the same, no evidence, as such, has been led by the Insurance Company to rebut these income tax returns. Even, no cross-examination of CW-1/A Rajan Arora, Clerk, Income Tax Department, was conducted, who proved the income tax returns. On this aspect, thus the Tribunal has rightly taken the income of deceased as Rs.2,41,460/- per annum. However, actual income has to be worked upon minus tax. Ex.CW1/3 reflects tax as Rs.6,174/- and

by the Tribunal. Thus, after deducting tax amount of Rs.6,174/-, the earnings is worked upon a Rs.2,35,286/-. 40% of this amount, which comes to be Rs.94,114.4, to be added as future prospects. Thus, total income comes to Rs.2,35,286 + Rs.94,114.4 = Rs.3,29,400.4. 1/3rd has to be deducted from this amount as personal expenses and thus, income comes to be Rs.2,19,600.3. The suitable multiplier as per *Pranay Sethi's case (supra)* is '16'. By applying this multiplier, the earnings are worked upon as Rs.35,13,604/-. In addition to same, Rs.44,000/- as parental consortium, Rs.16,500/- as loss of estate and Rs.16,500/- as funeral expenses, are also to be paid, as observed in the earlier portion of the judgment.

In the light of aforesaid discussion, the compensation re-assessed is as follows:-

<i>Sr. No.</i>	<i>Head under which amount awarded</i>	<i>Amount</i>
1	Loss of dependency	Rs.35,13,604/-
2	Parental consortium	Rs.44,000/-
3	Loss of estate	Rs.16,500/-
4	Funeral expenses	Rs.16,500/-
	Total	Rs.35,90,604/-/-

FAO No.2351 of 2013 relating to MACT No. 118 of 2009

Tanisha (since deceased) was 5 years old, at the time of accident. Compensation on account of death of Tanisha, has been awarded as Rs.3,85,000/-, while relying upon judgment passed by the Hon'ble Supreme Court in *R.K.Malik and another vs. Kiran Pal and others, 2009(3) RCR (Civil) 403*. Even, reference has been made to the judgments passed by Hon'ble Delhi High Court in *National Insurance Company Limited vs. Farzana and others, 2009 ACJ 2763* and *Jatinder Kumar and others vs. Oriental Insurance Co. Ltd. and another, 2010 ACJ 242*, where,

an amount of Rs.3,75,000/- has been awarded to the parents of deceased

children, aged 7 years and 3 years. Considering the same, while awarding Rs.3,75,000/-, an additional amount of Rs.10,000/-, was also granted, on account of expenditure incurred upon transportation, funeral and last rites. Thus, total compensation awarded by the Tribunal is Rs.3,85,000/-.

Now, learned counsel for the claimants assiduously submitted that compensation awarded is on lower side and is not just and fair. To so substantiate his claim, learned counsel for the claimants has relied upon the judgments passed by the Hon'ble Supreme Court in ***Puttama and others vs. K.L.Narayana Reddy and another, 2013(15) SCC 45, R.K.Malik and another vs. Kiran Pal and others, 2009(14) SCC 1*** and ***Krishan Gopal and another vs. Lala and others, 2014(1) SCC 244*** and in ***Civil Appeal No.6902 of 2021, titled as Kurvan Ansari alias Kurvan Ali & Anr. vs. Shyam Kishore Murmu and another, decided on 16.11.2021.***

On the other hand, learned counsel for the Insurance Company has refuted the claim of the claimants and submitted that impugned Award calls for no interference.

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

However, the latest judgment of the Hon'ble Supreme Court on the subject is ***Kurvan Ansari's case (supra)***, where, the Court was considering the case of death of 7 year old, in a motor vehicular accident,

given:-

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 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.

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 163-A(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 nonearning 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.3 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 nonearning 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.4 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 observation, the Court took the notional income of the deceased child as **Rs.25,000/-** and applied multiplier of '15', as prescribed in Schedule II for the claims under Section 163A of the Motor Vehicle 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/-.

Now, reverting to the case in hand, be it noted that Insurance Company has not challenged the Award. In the case in hand, the accident had taken place on 01.12.2008. Ever since the decision of the case, in which, the accident took place in 2004, as under consideration in ***Kurvan Ansari's case (supra)*** and also considering the date of death in ***Krishan Gopal's case (supra)***, the value of rupee has come down drastically. Besides this fact, it is also essential to take note that deceased Tanisha was studying in Sacred Heart Senior Secondary School, Chandigarh, which is one of the affluent schools of Chandigarh city and thus, considering the same, her chances of placement in life, were relatively bright. Taking all these things into consideration, the notional income can safely be taken to Rs.33,000/-, in the case in hand.

In this regard, reference is also been made to the decision of

Gulab Singh and others, decided on 10.07.2017, wherein, notional income of a child, who died in an accident, which took place in 2012, was taken as Rs.50,000/-. Even, reference is made judgment passed by this Court in ***Ranjit Kaur and others vs. Sukhdev Pal and others, 2020(1) RCR (Civil) 778***, wherein, notional income of 12 year old child, qua the accident, which took place in 2006, was taken as Rs.40,000/-.

Thus, considering the aforesaid case law, the compensation is being re-assessed as herein given:-

(i) *Notional income – Rs.33,000/- per annum*

(ii) *Compensation after multiplier of '15' – $33,000 \times 15 = \text{Rs.}4,95,000/-$*

(iii) *Conventional heads (loss of estate and funeral expenses) – Rs.16,500/- each [at the enhanced rate of 10% as per ***Pranay Sethi's case (supra)***]*

The enhanced amount of compensation comes to be Rs.5,28,000/- The compensation already awarded by the Tribunal is Rs.3,85,000/-. Therefore, the balance of enhanced amount of compensation, to be paid, is worked upon as $\text{Rs.}5,28,000 - \text{Rs.}3,85,000 = \text{Rs.}1,43,000/-$.

FAO No.4529 of 2013 relating to MACT No.119 of 2009

In the accident in question, Kanishka Narang, who was occupant of the ill-fated car, had also suffered injuries. As per version of the claimants, she had suffered head injury. PW-1 Mohinder Singh Narang, who is grandfather of Kanishka Narang, had proved the medical bills, which are Ex.C1 to Ex.C112, Ex.C114 and Ex.C116 to Ex.C121, the total whereof is Rs.2,04,055/-, which is the amount incurred upon treatment of Kanishka Narang. As observed by the Tribunal, these bills have not been disputed by the respondents. Besides the said amount of bills, the Tribunal had granted additional amount of Rs.20,000/-, on account of pain and sufferings,

Rs.5,000/- on account of special diet and Rs.5,000/- towards transportation charges. Thus, the total compensation, which was granted, on account of injuries sustained by Kanishka Narang is Rs.2,34,055/-. This amount has been asserted by the claimants to be on lower side.

It is pertinent to mention that from the perusal of the medical documents, coming on record, it is evident that injured Kanishka Narang was extended treatment from various hospitals, such like, DMC Hospital, Ludhiana, Chaitanya Hospital, Chandigarh, Fortis Hospital, Mohali and Civil Hospital. The discharge cards reflect head injury to have been sustained by the claimant and she suffered multiple fractures. Thus, it is quite obvious that Kanishka Narang must have passed through lot of trauma, more particularly, when she never had the comforting hands of her parents, who had died in the accident in question. Lot of visits to hospitals must have been made by her and her family. She must have remained away from her school, for a considerable period, which affected her education. Thus, considering all these aforesaid aspects, an additional amount of Rs.1,25,000/- is hereby granted, besides the medical bills of Rs.2,04,055/-. Thus, the total compensation comes to $Rs.2,04,055 + Rs.1,25,000 = Rs.3,29,055/-$.

In the light of aforesaid discussion, FAOs No.2350 of 2013 stands allowed, whereas FAO No.4283 of 2013 stands dismissed. FAO No.2352 of 2013 stands dismissed, whereas FAO No.4282 of 2013 stands partly allowed, with the above-stated modification, in the amount so awarded. However, the amount reduced, shall be deducted from the amount paid to claimant No.2-Mohinder Singh Narang, as per the Tribunal. FAOs

The enhanced amount awarded in FAOs No.2350 and 2351 of 2013, shall be payable to both the claimants in the ratio of 70% to Kanishka Narang and 30% to Mohinder Singh Narang, along with the interest, as ordered by the Tribunal. However, the enhanced amount awarded in FAO No.4529 of 2013, shall be payable to claimant Kanishka Narang, along with the interest, as ordered by the Tribunal.

January 27, 2022

Vgulati

Whether speaking/reasoned

Whether reportable

(ARCHANA PURI)

JUDGE

Yes

Yes