IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-5419-2014 (O&M)
Date of Decision: November 30, 2022

Anita and others

....Appellants

Versus

Iqbal Singh and others

.....Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Ms.Kiran Bala Jain, Advocate
for the appellants.

Mr.Ravinder Arora, Advocate
for respondent No.3-Insurance Company.

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ARCHANA PURI, J

Challenge in the present appeal is to the Award dated 01.11.2013 passed by learned Motor Accident Claims Tribunal, whereby, compensation had been granted to the appellants-claimants, on account of death of their son, namely Shubham (brother of appellant-claimant No.3), aged about 11 years, in a motor vehicular accident, which took place on 13.08.2012.

On appraisal of the evidence, adduced qua the death of Shubham, aged 11 years, learned Tribunal had awarded compensation to the extent of Rs.2,05,000/-. The liability to pay the compensation was fastened, jointly and severally, upon the driver, owner and insurer of the offending vehicle i.e. Auto rickshaw bearing registration No.HR-37C-4532.

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

At the very outset, it is pertinent to mention that claim petition had been filed under Section 163A of the Motor Vehicle Act.

So far as, the taking place of the accident, due to use of Auto rickshaw, driven by respondent No.1-Iqbal Singh and same having resulted into fatal injuries caused to Shubham, is concerned, the same stands amply established, from the evidence brought on record. Even though, the respondent-driver as well as owner and the insurance company, in their separate replies, had denied about taking place of the accident, but no satisfactory evidence, to so substantiate this plea, has been led.

Suffice to consider that appellant-claimant No.1-Anita, who is mother of the deceased, in her affidavit Ex.PW2/A, has categorically deposed about the taking place of the accident and the same resulting into the death of her son Shubham, who was 11 years old. Besides the same, an eye witness has been examined, namely Amit Kumar as PW-3, who deposed about the manner of taking place of the accident and the same having caused death of Shubham. Even, PW-1 Rajesh Kumar, Criminal Ahlmad has been examined, who had proved the record, relating to the FIR got registered qua the accident in question and also about driver of offending vehicle, namely Iqbal Singh, to be facing criminal trial. Considering the aforesaid evidence, the fact of accident, due to use of Auto Rickshaw bearing registration No.HR-37C-4532 and the same, having resulted into death of Shubham, stands amply established.

In this backdrop, now compensation, so worked upon by the Tribunal has been questioned in the present appeal. Learned Tribunal, took into consideration the fact of petition having been filed under Section 163A of the Motor Vehicle Act and since the deceased child was not an earning member, learned Tribunal considered the notional income as per Schedule-II, for the purpose of fixing the compensation. Learned Tribunal had awarded compensation by taking notional income of the deceased as Rs.15,000/- per annum and by deducting 1/3rd, took the dependency as Rs.10,000/- per annum and by considering the age of mother of the deceased, applied the multiplier of '16'. Thus, the compensation was worked upon as Rs.10,000x16=Rs.1,60,000/-. Besides the same, on account of expenditure incurred, on account of transportation of dead body, funeral and last rites, another some of Rs.20,000/- was granted. A sum of Rs.25,000/- was also granted, on account of future prospects of the child. Thus, in total, compensation to the extent of Rs.2,05,000/- was awarded by the Tribunal.

The 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"*** considered 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.

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 of claims under Section 163-A of the Motor Vehicle Act and worked upon the compensation as Rs.3.75 lakh, towards 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/- .

Considering the aforesaid case law, now reverting to the case in hand. Be it noted that insurance company has not challenged the Award. The accident in the case in hand took place on 13.08.2012. Keeping in view the same and also considering the date of death of victims under consideration in the above-said case law, there has been drastic devaluation of money and value of rupee, coming down from the date on which Schedule-II of the Motor Vehicle Act was introduced, for giving 'just' and 'reasonable' compensation to the claimants, the notional income, in the case in hand, can very conveniently be taken to be Rs.30,000/- per annum. Thus, considering the age of mother of the deceased, the multiplier to be applied, in the case in hand, as per guidelines laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, is '16'.

Considering it to be so, the compensation so worked upon by learned Tribunal, ought to be reappraised. Considering the latest case law, on account of loss of consortium also, the parents of the deceased, ought to be compensated. As per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the extent of consortium which should be paid is stated to be Rs.40,000/- 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%, which comes to be Rs.44,000/- as '**loss of consortium**'. In the light of the same, appellants-claimants No.1 and 2 (parents) are entitled to compensation, on the count of 'loss of consortium' to the extent of Rs.44,000/- each, and thus, the total comes to be Rs.88,000/-.

Even, as per ***Pranay Sethi's case (supra)***, Rs.15,000/- is to be granted as 'funeral' expenses, which also needs additional enhancement to the extent of 10%, after every three years, which comes to Rs.16,500/-.

Learned Tribunal had also provided compensation for prospective happiness, but however, the same is covered under the count of 'loss of consortium' as in ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, it was further laid down that '**loss of love and affection is comprehended in loss of consortium**' and this clause also covers the prospective happiness.

Hence, there is no justification to award compensation, specifically towards 'loss of prospective happiness'.

Considering the same, now the compensation payable to the claimants is re-appraised as following:-

Loss of dependency (Rs.30,000x16)	**:**	**Rs.4,80,000/-**
Loss of consortium (Rs.44,000x2)	**:**	**Rs.88,000/-**
Funeral expenses	**:**	**Rs.16,500/-**
Total	**:**	**Rs.5,84,500/-**

The enhanced amount shall be apportioned and released amongst the appellants-claimants, as ordered by learned Tribunal. The remaining terms of the impugned Award shall remain the same.

With the above observations, the appeal stands allowed.

November 30, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**