IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6177 of 2014 (O&M)
Date of decision: 08.03.2022

Kallu and others .... Appellants

versus

Jaikam and others .... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Arjun Atri, Advocate
for the appellants.

Mr. Pardeep Kumar, Advocate
for the Insurance Company.

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Manjari Nehru Kaul, J.(Oral)

The claimants are in appeal seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal, Mewat at Nuh (in short 'the Tribunal') with regard to the death of Mohobbat in a motor vehicular accident that took place on 15.11.2012.

Admittedly, the son of appellants No.1 and 2 died on 15.11.2012 on account of injuries received by him in the motor vehicular accident and FIR No.457 dated 15.11.2012 under Sections 279 and 304-A IPC was registered at Police Station Punhana. The pleaded case of the claimants No.1 and 2 was that their deceased son, aged 13 years, was helping his dumb father in running a fruit shop from which they were earning approximately Rs.6,000/- per month. Besides the monetary loss suffered, compensation was also sought for loss of love and affection to the sum of Rs.20 lacs from respondents (respondent No.1 being the driver, respondent No.2 being owner and respondent No.3 being insurer of the offending vehicle) jointly and severally.

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Upon notice, respondents put in an appearance and filed their respective replies. Respondent No.1 denied the involvement of offending vehicle bearing No.HR-28C-0113 in the accident much less the accident having been caused due to rash and negligent driving of the driver. Similar submissions were made by respondent No.3 that the claimants had filed a false claim with the collusion of respondents No.1 and 2.

From the pleadings, the Tribunal framed the following issues:

1. Whether the accident in question resulting in death of Mohobbat son of Kallu took place on 15.11.2012 at about 3.00 pm near Paimakhera road, Punhana in the area of P.S.Punhana because of rash and negligent driving of vehicle bearing resistration No.HR28C-0113 by its driver respondent No.1? OPP
2. If issue No.1 is proved, whether petitioners are entitled to get compensation. If so, to what amount and from whom? OPP
3. Whether respondent No.1 was not holding valid and effective driving licence to drive the offending vehicle at the time of accident, if so, its effect? OPR-3
4. Whether respondent No.2 has willfully violated the terms and conditions of the insurance policy? OPR-3
5. Relief

To prove their case, the claimants-appellants stepped into the witness box as PW-1 and PW-2 and also tendered relevant documents as Ex.P-1 to P-15.

On the other hand, respondent No.3 tendered copies of driving

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licence Ex.R1 and report of licensing authority, Hathin Ex.R2. Respondents No.1 and 2 chose not to lead any evidence.

On an analysis of the evidence and other material available on record, the Tribunal took the notional income of the deceased to the tune of Rs.15,000/- per year and took the multiplier of 15 as per schedule of amended Motor Vehicle Act. Hence, the amount of compensation came to Rs.2,25,000/-. The Tribunal also awarded Rs.15,000/- on account of last rites and transportation expenses and total compensation was assessed to Rs.2,40,000/-. Since the claimants No.1 and 2 were the parents of the deceased, they were held entitled to 80% of compensation whereas remaining claimants i.e. appellants No.3 to 6 were entitled to 20% of compensation in equal shares.

Learned counsel for the appellants while referring to the judgment of Hon'ble Supreme Court in ***Krishan Gopal and others vs. Lala and others, 2014(1) SCC 244*** submitted that the notional income of a child below 15 years is to be taken as Rs.30,000/- per year, more so, when the deceased son was helping his dumb father in running a fruit shop and hence, the awarded notional income required to be enhanced. Learned counsel submitted that had the deceased been alive, he would have contributed substantially to the income of the family, more so, since his father was dumb.

Learned counsel for respondent No.3 was unable to dispute the ratio of law laid down by the Supreme Court in *Krishan Gopal's case (supra)*. He further submitted that the amount awarded by the Tribunal was just and reasonable and did not warrant any interference.

After hearing submissions of the learned counsel for the parties

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and perusing the case file, this Court is of the opinion that the compensation awarded by the Tribunal requires enhancement.

In my considered opinion, the ends of justice would be met if the notional income of the deceased is taken as Rs.30,000/- per year in view of the settled law in *Krishan Gopal's case(supra)* and the multiplier of 15 is applied in the light of ***Reshma Kumari & others vs. Madan Mohan & another, 2013(9) SCC 65***. Hence, the loss of future income is assessed to be Rs.30,000/- x 15 = Rs.4,50,000/-. The amount awarded on account of last rites and transportation expenses is enhanced to Rs.16,500/-. Further, in view of the decision of Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333***, this Court deems it appropriate to award the appellants an amount of Rs.40,000/- each for loss of filial consortium.

As a sequel to the above discussion, the enhanced amount of compensation to which the claimants are entitled is enhanced from Rs.2,40,000/- to Rs.7,06,500/-. The enhanced amount so awarded i.e. in the sum of Rs.4,66,500/- shall carry interest @ 9% per annum from the date of filing of claim petition till its realisation. However, respondent No.3 is granted rights to recover the enhanced compensation from respondents No.1 and 2.

Accordingly, the award is modified and the appeal stands partly allowed in the above terms.

08.03.2022 **(Manjari Nehru Kaul)**
sonia **Judge**

Whether speaking/non-speaking? Yes/No
Whether reportable? Yes/No

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