

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

**FAO-5384-2016
Decided on:-31.08.2022**

Suman and others

....Appellants..

vs.

Farman and others

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Namit Sharma, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate,
for the respondent-Insurance company.

HARKESH MANUJA J.

The claimants are in appeal, impugning the award dated 24.02.2016 passed by learned Motor Accident Claims Tribunal, Panipat, (hereinafter referred to as “Tribunal”), praying for enhancement of compensation.

2. Present is an unfortunate case, wherein the appellants lost their minor daughter, namely, Poonam, aged 13 years in a road accident, which took place on 25.02.2013, being hit by offending vehicle i.e. Bolero Jeep bearing No.UP-19T-0415, driven by respondent No.1. The appellants-claimants (parents) filed claim petition before the Tribunal for compensation. Vide award dated 24.02.2016, a positive finding was recorded in favour of the claimants and against respondent No.1 (driver of the offending vehicle) on the issue of rash and negligent driving of respondent No.1 and the learned

Tribunal awarded a sum of Rs.3,50,000/- as compensation in favour of the appellants-claimants along with interest @ 7.5% per annum from the date of institution of claim petition till its realization.

3. Feeling aggrieved, the appellants-claimants filed present appeal seeking enhancement of compensation.

4. It has been vehemently contended on behalf of learned counsel for the appellants that the deceased was a student and considering the fact that she was getting education and could have served/helped her parents in future, more compensation should have been awarded in favour of the appellants. He further submits that the learned Tribunal has committed an error while assessing the notional income of deceased/child in this case to be Rs.20,000/- per annum.

5. On the other hand, learned counsel for the respondent-insurance company submits that in the facts of the present case, the appellants have already been awarded just compensation.

6. Having heard learned counsel for the parties and on perusal of the case file, I find that the learned Tribunal has committed an error while assessing the notional income of the deceased @ Rs.20,000/- per annum. The learned Tribunal has failed to act in a prudent manner while deviating from the judgment passed by the Hon'ble Supreme Court in case of ***"Kishan Gopal and another vs Lala and others***, 2013(4) RCR (Civil), 276 and has assumed too much to create a distinction on the basis of deceased child being female in the present case which appears to be neither logical nor legal. On a careful examination of findings recorded in ***Krishan Gopal's*** case (supra), it can be traced out that no such distinction has been made

therein.

7. In the case of ***Kishan Gopal's*** case (supra) while dealing with a case relating to road accident in the year 1992, the Hon'ble Supreme Court was pleased to hold that in case of death of a child, aged 10 years, notional income of Rs.30,000/- shall be taken while determining the compensation.

8. In the present case, accident took place on 25.02.2013 i.e. more than 21 years after the accident, which was subject matter of ***Kishan Gopal's*** case (supra). Considering the time gap in the date of accident as well as devaluation of Rupee drastically, this Court in case titled as ***"Sunita Devi and another vs. Vijay Pal and others"***, 2018(2) Law Herald 1659, wherein the accident took place in the year 2012 after considering the case of ***Kishan Gopal's*** case (supra), has been pleased to hold that the notional income should be taken @ Rs.50,000/- instead of Rs.30,000/- in case of death of a child aged 15 years. The ratio laid down in ***Sunita Devi's*** case (supra) is fully applicable to the facts and circumstances of the present case as the accident in this case took place in the year 2013 and the deceased child happened to be 13 years of age. Relevant extract from para 8 of ***Sunita Devi's*** case (supra) is reproduced hereunder for reference:-

“8. Reference can also be made to a latest judgment of this Court in the case of **Beet Nath and another v. Gulab Singh and others** (FAO No.159-2015) decided on July 10, 2017, wherein the notional income of the child who died in an accident which took place in the year 2012 was taken as Rs.50,000/-. It was observed in that case that in the case of ***Kishan Gopal and another v. Lala and others***, 2013(4) RCR (Civil)

276, wherein the notional income of a 10 years old child was taken as Rs.30,000/-, the year of the accident was 1992. But in that case, the accident had taken place in the year 2012 and the age of the deceased at the time of the accident was 15 years. Since, the value of rupee has come down drastically since the year 1992, the notional income in Beet Nath's case (supra) was taken as Rs.50,000/-."

Thus, applying the ratio laid down in the **Sunita Devi's** case (supra) and considering the notional income of the deceased to be Rs.50,000/- per annum, compensation in the present case is enhanced in the following manner by giving an increase in the notional income as well as reasonable increase of another Rs.50,000/- under the conventional heads by making it one lakh, again relying upon the depreciating value of Rupee. Considering the year of accident in **Kishan Gopal's** case (supra) as compared to the year of accident in the present case, which has a long gap of about 21 years in between:-

Sr. No.	Heads	Amount
1	Notional income=50,000/-x15	Rs.7,50,000/-
2	Conventional heads	Rs.1,00,000/-
	Total compensation	Rs.8,50,000/-
	Compensation awarded by the Tribunal	3,50,000/-
	Enhanced compensation	5,00,000/-

9. The enhanced amount of compensation shall carry interest @ 9% from the date of filing of claim petition till its realization. Accordingly, the award stands modified to the above extent and present appeal is partly allowed. It is made clear that in case, the respondent-Insurance Company fails to pay the enhanced compensation along with interest @ 9% within a period of two months

from today, the appellants-claimants shall be entitled for interest @
15% per annum.

10. Pending miscellaneous application, if any, stand disposed
of.

31.08.2022
sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No