

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

FAO-8221-2014 (O&M)

Date of Decision: December 15, 2022

Vinod Kumar and another

....Appellants

Versus

Pardeep Kumar and another

.....Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr.Narender Kaajla, Advocate
for the appellants.

Mr.Amit Kumar Goyal, Advocate
for respondent No.2-Insurance Company.

ARCHANA PURI, J

Challenge in the present appeal is to the Award dated 14.05.2014 passed by learned Motor Accident Claims Tribunal, whereby, compensation has been granted to the claimant, on account of death of their son, namely Ankush, in a motor vehicular accident.

On appraisal of the evidence, brought on record, learned Tribunal, had granted compensation to the extent of Rs.3,72,000/- along with interest @7.5 per annum, to the appellants-claimants. Even, the liability of the respondents, was held to be joint and several.

Feeling aggrieved by the extent of compensation, so granted, the appellants-claimants have filed the appeal.

In pursuance of the notice issued, the insurance company had made appearance.

As per the version of the appellants-claimants, on 29.09.2013, Ankush, minor son fo the appellants along with Baljeet s/o Chandgi Ram, on foot, were going to the fields. Enroute, Bolero vehicle bearing registration No.HR-22C-7149, driven by respondent No.1-Pardeep Kumar, in a rash and negligent manner, came from backside and struck against Ankush and Baljeet. As a result of the accident, Ankush fell on the pucca portion of the road and Baljeet fell on the katcha portion. Ankush received multiple serious injuries on his person. He was shifted to Sarvodaya Hospital, Hisar, where, he was treated but he succumbed to his injuries on 01.10.2013.

It is further the specific claim of the appellants-claimants, about the accident, to have taken place, due to rash and negligent driving of respondent No.1, qua which, FIR No.1043 dated 30.09.2013 under Sections 279, 336 and 337 IPC was registered against respondent No.1-Pardeep Kumar and later on, in pursuance of death of Ankush, addition of Section 304-A IPC was made.

However, respondent No.1-driver/owner of the offending vehicle, in his separate reply, had denied about the accident. Even, the insurance company-respondent No.2 had denied about the accident, besides, taking other objections.

At the very outset, it is pertinent to mention that even though, there is denial of accident, at the behest of the respondents, but no evidence, has been led on record, to so substantiate this plea of denial. In fact, respondent No.1, who in the capacity of being driver, at the relevant time, was the best person, to depose about the accident having not caused and

about no involvement of the offending vehicle, in the alleged accident, had not stepped into witness box.

On the contrary, Baljeet Singh, who was accompanying the deceased, at the relevant time, has stepped into witness box as PW-2 and in his affidavit, he has categorically stated about fact of accident and also imputed rashness and negligence, on the part of respondent No.1-Pardeep Kumar and also deposed about sustaining of extensive injuries by Ankush, as a result of the accident, which proved fatal. Even, PW-3 Vinod Kumar, who is father of the deceased, has deposed about the death of his son, in motor vehicular accident. PW-1 Mukesh Kumar, Criminal Ahlmad has proved the record about the trial being faced by respondent No.1-Pardeep Kumar, in criminal case, vis-a-vis, FIR lodged against him and proved the relevant documents. Even, PW-4 Dr.B.L.Bagri, has been examined, who has deposed about the admission of the deceased, in the hospital and also about his death. The post-mortem report has been proved as Ex.P20. This evidence has gone un-rebutted and unchallenged.

Considering the aforesaid evidence and the very fact of respondent No.1, not stepping into witness box, to substantiate the plea of denial and also considering the fact of no appeal, having been filed, at the behest of respondent No.1, to challenge the liability, so fastened upon him, the fact of accident and imputation of rashness and negligence, on the part of respondent No.1-Pardeep Kumar, stands amply established and findings qua the same, has attained finality.

In this backdrop, now further, we have to consider the extent of compensation to be granted to the appellants-claimants.

At the very outset, it has been submitted by learned counsel for the appellant that deceased Ankush was 6 years old, at the time of accident. It is further submitted by learned counsel for the appellant that learned Tribunal had not appraised the evidence, in correct perspective and had taken the notional income, on lower side and therefore, the compensation, so awarded by learned Tribunal, is on lower 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 6 years. At the time of accident, deceased was student of 1st class. 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 1st class and had he not met with the accident, he would have been well settled in his life. To so substantiate, his submission, learned counsel for the appellants has placed reliance upon report card Ex.P21, wherein, percentage of the deceased child, in Ist term examination, has been stated to be 97.5%.

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.

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 case 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 29.09.2013. Considering the date of death in ***Kishan Gopal's case (supra)***, the value of rupee has come down drastically. Moreover, the deceased child, was a bright child, as evident from his performance, while studying in 1st Class.

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 annum. Thus, considering the age of the parents, who were 28 and 26 years old, at the relevant time, the multiplier to be applied in the case, in hand, as per guidelines laid down in ***Sarla Verma's case (supra)***, is '17' and so calculating, the loss of dependency comes to be Rs.5,10,000/-.

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 the count 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.

Besides the same, it is also pertinent to mention that the victim also remained admitted in Hospital for one day, before his death, after the accident and prior to his death. Relating to the same, even Dr.B.L.Bagri, Medical Superintendent of Sarvodaya Multispeciality Hospital, Hisar, has

been examined as PW-4, who has deposed about admission of Ankush, in their hospital and has further proved the copy of MLR Ex.P6. Further, ruqqa, which was sent to the police station is Ex.P7. He also deposed that patient was treated by Neuro Surgeon in the ICU, on ventilator support and patient expired on 01.10.2013. He further proved ruqqa of death Ex.P8, investigation reports Ex.P9 and Ex.P10, death report Ex.P11. Besides the same, bills of medical expenditure, so incurred have been proved as Ex.P12 to Ex.P19.

Considering the aforesaid evidence, so adduced, learned Tribunal had appropriately granted, an amount of Rs.22,000/-, in lumpsum, as expenses, incurred on the treatment of Ankush, prior to his death and the finding, on this count, is hereby affirmed.

Even though, a sum of Rs.1 lakh has been granted by learned Tribunal towards loss of love and affection to appellant-claimant No.2 (mother), but however, it is pertinent to make reference to the decision rendered by the Hon'ble Supreme Court in *Magma's case (supra)*, wherein, comprehensive interpretation was given to the expression '**consortium**' to include '**spousal consortium**', '**parental consortium**' as well as '**filial consortium**'. It was further laid down that '**loss of love and affection is comprehended in loss of consortium**'. Hence, there is no justification to award compensation towards 'loss of love and affection', as a separate head, which view was further endorsed in *Somwati's case (supra)*.

In view of the aforesaid discussion, the compensation to be granted to the appellants-claimants, is hereby re-appraised as follows:-

Loss of dependency : Rs.5,10,000/-

Loss of consortium (Rs.44,000x2)	:	Rs.88,000/-
Funeral expenses	:	Rs.16,500/-
Loss of estate	:	Rs.16,500/-
Medical treatment	:	Rs.22,000/-
Total	:	Rs.6,53,000/-

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to **Rs.6,53,000-3,72,000=Rs.2,81,000/-**.

The enhanced amount shall be apportioned and released amongst the appellants-claimants, as ordered by learned Tribunal. The impugned Award dated 14.05.2014 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award shall remain the same.

With the above observations, the present appeal stands allowed.

December 15, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No