2023:PHHC:062627

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-2162-2004 (O&M)

Hanif Mohammad and another

...Appellants

VERSUS

Meenu Deen

...Respondents

(ii) FAO-2163-2004 (O&M)

Latif and another

...Appellants

VERSUS

Meenu Deen

...Respondents

Date of Decision: April 27, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Meenakshi Bali, Advocate for
Mr.G.C.Shahpuri, Advocate
for the appellants (in both the appeals).

Ms.Nancy Vashisht, Advocate for
Mr.Namit Khurana, Advocate
for the respondent (in both the appeals).

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ARCHANA PURI, J.

These two appeals emanate from common Award dated 09.02.2004 passed by learned Motor Accident Claims Tribunal, in respective claim petitions filed by the appellants-claimants, thereby, granting compensation to the extent of Rs.50,000/-, in each claim petition, on account of death of two children, aged 4 and 5 years, at the relevant time.

Being dissatisfied with the awarded amounts, appellants-claimants have filed respective appeals, for seeking extensive enhancement of the compensation.

So far as, the fact of accident and manner of its taking place as well as the liability of the respondent, is concerned, it is pertinent to mention that no appeal has been filed by the respondent, so made liable, to challenge the findings, so recorded.

As per the version, put forth by the appellants-claimants, on 06.12.2001, their children namely Salman Khan and Ashian were standing on the *kacha* portion of the road. Respondent-Meenu Deen, came there, while driving the tractor trolley bearing registration No.HR-02D-9368. The trolley was overloaded with sugarcanes and was driven at a very high speed, as a result whereof, the trolley of the respondent overturned and children were trapped under the trolley and died instantaneously.

Considering the very fact of talk of compromise, at initial stage, having taken place with the respondent and also considering the fact of respondent, as admitted by him, in the cross-examination, to be facing trial for causing the accident, learned Tribunal had imputed the rashness and negligence, on the part of the respondent, while driving the aforesaid tractor trolley.

However, considering the deceased children to be 4 and 5 years old and not contributing anything to the family, compensation was granted by learned Tribunal, to the extent of Rs.50,000/-, in each claim petition.

Now, it is submitted by learned counsel for the appellants-parents of both the deceased children that learned Tribunal fell in error, in granting such a meagre compensation. It is submitted that compensation, so granted, requires extensive enhancement, as per settled law.

On the other hand, learned counsel for the respondent has refuted the claim of the appellants-claimants, while asserting that no satisfactory evidence has been led to seek compensation, as now impressed upon. Thus, he submits that both the appeals sans merit and deserve to be dismissed.

Before, reverting to the computation of compensation, in view of the facts of the case, it is pertinent to mention that children Salman Khan was 4 years old and Ashian was aged 5 years old, had died, whey they were toppled over by the tractor trolley in question, driven by the respondent. In these circumstances, it is required to be seen as to how the computation of compensation may be made.

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 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.*
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> *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.*
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> *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.*
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> *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/-.

Considering the aforesaid, now reverting to the case in hand. Be it noted that the respondent had not challenged the Award. The accident in the case, in hand, had taken place on 06.12.2001. Definitely, the value of rupee has come down drastically, since then.

Taking into consideration, all the aforesaid factors, the notional income, in both the appeals, can safely be taken to be Rs.25,000/- per month. Thus, considering the age of the parents, the multiplier to be applied, as per guidelines laid down in ***Sarla Verma's case (supra)***, is '**15**' and so calculating, the loss of dependency comes to be Rs.3,75,000/-, in both the appeals.

Besides the aforesaid, amounts are to be paid on conventional heads, namely, 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 account 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 funeral expenses, it is Rs.15,000/-, which requires 10% enhancement, after a period of three years, which has since passed by. In the given circumstances, on account of '**filial consortium**', the parents-appellants, are entitled to the compensation of **Rs.44,000/-** each, in the both appeals. Besides the same, **Rs.16,500/-** is to be paid as '**funeral expenses'** in both the appeals. Thus, loss of dependency, in both the appeals, comes to be Rs.3,75,000/-, filial consortium comes to be Rs.88,000/- (Rs.44,000/- to each of the appellant) and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be **Rs.4,79,500/-**.

As such, the enhanced compensation, in the both appeals, after the compensation awarded by the Tribunal comes to be **Rs.4,79,500-50,000**

=Rs.4,29,500/-.

Accordingly, the impugned Award dated 09.02.2004 stands modified, to the extent, as indicated aforesaid. Keeping in view the interest rates having been reduced drastically, on the enhanced amount of the compensation i.e. **Rs.4,29,500/-**, in both the appeals, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the respective appeals, till realization of the enhanced amount of compensation. The remaining terms of the impugned Award shall remain the same.

With the above observations, both the appeals stand allowed.

April 27, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned	**Yes**
Whether reportable	**Yes/No**