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

Date of decision: February 08, 2023

1. FAO-3446-2001(O&M)

Gurjit Singh Malhotra and others

....Appellants

versus

Sita Ram and others

....Respondents

2. FAO-3447-2001 (O&M)

Gurjit Singh Malhotra and others

....Appellants

versus

Sita Ram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Mandeep Sindhu, Advocate for
Mr. Sanjiv Gupta, Advocate for appellants.

Mr. Punit Jain, Advocate
for respondent No.3-Insurance Company.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, above-mentioned two appeals are being disposed of, since the issues and facts raised therein are common. For brevity, recitals are taken from FAO-3446-2001.

2. Aggrieved with Award dated 01.12.1999 rendered by learned Motor Accidents Claims Tribunal, Hisar (for brevity, Tribunal), appellant/claimants are before this Court by way of an appeal seeking enhancement of compensation.

3. Succinct facts, as noted by learned Tribunal, are as below:

“2. In brief, the facts of the case are that on 4.5.97, petitioner Gurjit Singh Malhotra alongwith his wife and his daughter Sanjhi alias Gurashish was going in a gypsy No.HR-24A/5119 which met with an accident with a Tanker bearing registration No.RJ-07/G-1895 which was stationed by respondent No.1 without giving any indication before parking the tanker. All the occupants of the gypsy suffered injuries, but Balwinder Kaur and Sanjhi alias Gurashish Kaur died and in these circumstances, present petition was filed.”

3.1. Two claim petitions were filed by the claimants, i.e., first **claim petition No.122 of 1997** was for seeking compensation on account of death of wife of claimant No.1 and mother of claimants No.2 and 3; and second **claim petition No.121 of 1997** was for seeking compensation on account of death of daughter of claimant No.1 and sister of claimants No. 2 and 3.

4. Respondents No.1 & 2-Driver and owner of offending vehicle were proceeded against *ex parte*.

4.1. Upon notice, only respondent No.3-Insurance Company contested the claim petition. The allegations with regard to accident having taken place on 04.05.1997 and negligence on the part of respondent No.1, were denied.

5. Both claim petitions were consolidated and issues were framed in claim petition No.122 of 1997 and evidence was also recorded in same petition.

6. Learned Tribunal framed the following issues:

- “1. Whether the accident took place due to the rash and negligent driving of the driver respondent No.1? OPP*
- 2. To what amount of compensation, all the petitioners are entitled and from whom? OPP*
- 3. Whether the Insurance Company is not liable to pay any compensation on account of preliminary taken in the written statement? OPR*
- 4. Relief.”*

7. On appraisal of record/ evidence, learned Tribunal decided issues No.1 to 3 in favour of claimants. Consequently, claimants were held entitled to compensation of Rs.2,56,000/- (**on account of death of Balwinder Kaur– wife**) and further claimants were held entitled to 70,000/- (**on account of death of Gurashish alias Sanjhi-daughter**) in equal shares. Interest @ 12% per annum from the date of institution of petitions till realization was allowed.

8. Learned counsel for the appellant/claimants contends that no compensation on account of funeral expenses, loss of estate and loss of consortium etc. has been awarded. Learned counsel also contends that learned Tribunal has also not awarded anything on account of the fact that appellant-claimant(s) had to pay tuition fee @ Rs.500/- for the services of a tutor for claimants No.2 & 3 who were earlier given tuition by their mother- Balwinder Kaur herself and to pay Rs.450/- as transportation charges, on account of death of his wife. He further contends that learned Tribunal has granted inadequate compensation of Rs.70,000/- only on account of death of his daughter, namely Gurashish alias Sanjhi, who was studying in 5th class at the time of accident.

9. On the other hand, learned counsel for respondent No.3 submits that claimants have failed to prove that accident in question took place due to rash/negligent driving of respondent No.1. He further submits that as per Sarla Verma's case (supra), multiplier of 15 ought to have been applied instead of 16, as has been done by learned Tribunal while calculating compensation.

10. I have heard learned counsel for the parties and perused the record.

11. Instant first appeals were filed sometime in the year 2001 and owing to an incident of fire which broke out in the High Court, most of the pages of the paper-book(s) were burnt. In course of hearing, photocopies of paper-books have been handed over by learned counsels, which are taken on record.

12. Having heard rival contentions and on perusal of impugned award, I find that the submissions made before learned Tribunal were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same.

13. To my mind, award under challenge has been rendered after due and correct appreciation of record, including the evidence adduced by the parties.

14. In the premise, applying the principles in the cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **National Insurance Co. Ltd. v. Pranay Sethi**, reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**, I am of the view that the compensation for the death of Balwinder Kaur deserves enhancement.

14.1 Further, in the Apex Court judgment rendered in **Meena Devi versus Nunu Chand Mahto @ Nemchand Mahto and others, SLP (Civil)-5345-2019**, decided on 13.10.2022, after relying on judgment rendered in

Krishan Gopal and another versus Lal and others, reported as **(2014) 1 SCC 244**, compensation on account of death of a child aged about 12 years, was calculated treating same as Rs.30,000/- as notional income, including future prospects in place of Rs.15,000/-, as specified in the 2nd Schedule of the Motor Vehicles Act, 1988 and further application of multiplier as per **Sarla Verma’s case (supra)**. A total compensation of Rs.5,00,000/- was awarded in the **Meena Devi’s case (supra)**. In my opinion, its principles are apt to be applied in the present case as well.

14.2 In view of the above discussion, various computations of compensation *qua* each head are modified as below:

Deceased	Balwinder Kaur
Date of accident/death	04.05.1997
Age	37 years
Marital Status	Married
Claimants	Husband, daughter and son
Income of the deceased	Rs.2000/-
Tutor expenses	Rs.500/-
Transportation expenses	Rs.450/-
Total income of deceased	Rs.2,950/- p.m.
Future prospects	40% (Rs.2,950+1,180) = Rs.4,130/-
Deduction in dependency for personal expenses	1/3 rd (4,130-1376)=Rs.2,754/-
Annual dependency	Rs.33,048/- (2,754 x 12)
Total loss of dependency with Multiplier of 15	Rs.4,95,720/-
Funeral expenses and loss of estate	Rs.33,000/- (16,500+16,500)
Consortium	Rs.1,32,000/- (Rs.44,000 x 3)
Compensation on account of death of minor child, namely Gurashish alias Sanjhi	Rs.5,00,000/- (as per Apex Court judgment rendered in Meena Devi vs. Nunu Chand, SLP (Civil) No.5345-2019, decided on 13.10.2022).
Total	Rs.11,60,720/- (33,048 x 15+33,000+1,32,000 + 5,00,000)

Compensation awarded by the Tribunal	Rs.3,26,000/- (Rs.2,56,000/- + Rs.70,000/-)
Enhanced amount of compensation to be paid	Rs.8,34,720/- (Rs.11,60,720-Rs.3,26,000/-)

15. Accordingly, impugned award is modified in terms of above computations. Revised compensation shall be payable to claimants along with interest @ 6% per annum, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Revised compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimants in terms of the apportionment, as already determined by learned Tribunal.
16. Disposed of in above terms.
17. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 08, 2023
mahavir

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No