IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-138-2006 (O&M)
Date of Decision: November 08, 2023

Smt.Rajbala and another

...Appellants

VERSUS

Ashu and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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

Mr.Paul S. Saini and Mr.Vipul Sharma, Advocate
for respondent No.3.

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ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation, so awarded by learned Motor Accident Claims Tribunal, on account of death of their daughter Asha Rani, aged 17 years, in a motor vehicular accident, which took place on 06.03.2004.

On appraisal of the evidence brought on record, learned Tribunal had granted compensation, to the extent of Rs.1,60,000/- along with interest @ 7.5% per annum.

So far as the fact of accident and manner of its taking place, as well as liability fastened upon the driver, owner and insurer of the offending vehicle, to be joint and several are concerned, it is pertinent to mention that no appeal has been filed by the persons, made liable to challenge the Award and thus, this issue does not warrant any further scrutiny.

In this backdrop, learned counsel for the appellants-claimants has submitted that compensation granted, on account of death of Asha Rani, daughter of the appellants-claimants, in the accident, is meagre, which calls for 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.

At the very outset, it is pertinent to mention that the claim petition was filed by Smt.Rajbala and Raj Kumar for seeking compensation, on account of death of their daughter Asha Rani, whom they asserted to be 17 years old and student of 10th class. Considering the evidence adduced, vide impugned Award, learned Tribunal had granted lumpsum compensation to the extent of Rs.1,60,000/-. However, it should be noted that no reason, as such, has been assigned for assessing the lumpsum amount. Time and again, it has been observed by the Hon'ble Supreme Court that it is appropriate, if the compensation is worked upon by applying multiplier method.

In ***'Kishan Gopal and another v/s Lala and others, 2013(4) RCR (Civil) 276'***, while considering the death of a child, aged 10 years, Court 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. Besides the same, another 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 '***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'*** considered 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.*
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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.*
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> *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 ***'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 principles 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 applied 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 under conventional heads. 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 06.03.2004 and also considering the date of death in ***Kishan Gopal's case (supra)***, the value of rupee has come down drastically.

Taking into consideration, all the aforesaid factors, in modest estimate, the notional earnings of the deceased, in the case in hand, can be conveniently taken to be Rs.30,000/- per annum. After applying the multiplier of '**18**', in view of the ratio of the judgment in ***Sarla Verma's case (supra)***, the notional annual income of the deceased comes to be Rs.30,000x18=**Rs.5,40,000/-**.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in ***Pranay Sethi's case (supra)***. 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 consonance with the observations made in ***Pranay Sethi's case (supra)***, after making addition of 10% for the first three years from the passing of the judgment, which has since passed by, till 31.10.2023, the amount payable was taken to be Rs.44,000/- for each of the claimant. Another addition of 10% ought to be made after the expiry of three years' thereafter and thus, after 31.10.2023, addition has to be made to the extent of 10%, on the amount of Rs.44,000/-, which now works out to be Rs.48,400/- for each of the claimant and similarly, revised amount has to be granted on the count of '**loss of estate**' as well as '**funeral expenses**', which comes to be **Rs.18,150/-,** on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Asha Rani, is re-computed, as herein given:-

Loss of dependency	:	**Rs.5,40,000/-**
Loss of consortium	:	**Rs.96,800/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.6,73,100/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.6,73,100-**

1,60,000=Rs.5,13,100/-. On the enhanced amount of the compensation i.e. **Rs.5,13,100/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

The impugned Award dated 19.08.2005 stands modified, to the extent, as indicated aforesaid and the remaining terms of disbursal of the compensation, shall remain the same, as ordered by learned Tribunal.

With the above observations, the present appeal stands allowed.

November 08, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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