IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 2260 of 2016 (O&M)
Date of Decision :14.02.2023

Bhagwani Devi @ Bhanmati and Anr. ... Appellants

Versus

Parveen Kumar and Ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Sandeep Kotla Advocate, for the appellants.

Mr. Rajneesh Malhotra, Advocate with
Ms. Yagyashree Singh, Advocate,
for respondent No.3-Insurance Company

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SANJIV BERRY, J.

The present appeal has been preferred by the claimant-appellants against the award dated 05.11.2015 passed by the learned Motor Accident Claims Tribunal, Fatehabad, (hereinafter referred to as 'Tribunal').

2. The facts relevant to the present *lis* are that the claimants, being parents of the deceased, had filed the claim petition, stating therein that on 14.11.2013 their son Udey Kumar @ Uggar Sain, aged 13 years, was pillion rider on motorcycle bearing registration No. PB-23K-2362, which was being driven by Ramesh Chander and going from Kot Mangal Singh to Giaspura. At about 7.45 a.m when they reached near the park of village Giaspura, then TATA LPT bearing registration No. PB-46M-3789, driven by Parveen Kumar (driver) at a fast speed, rashly, negligently and in a careless manner,

came from opposite direction and hit the motorcycle due to which both Udey Kumar and Ramesh Chander fell down. Udey Kumar came under the left front tyre of the truck, and sustained multiple, grievous and serious injuries on his person which proved fatal and he succumbed due to the injuries at the spot. Respondent No.1 (Driver) ran away from the spot leaving the offending truck at the spot. On the statement of Ramesh Chander, eye witness of the accident, case FIR No. 314 dated 14.11.2013 was registered under Sections 279, 304-A and 427 of the IPC at Police Station, Focal Point Ludhiana, against driver-respondent No.1. Hence, the claimants have sought compensation on account of death of their son.

3. Claim petition was contested by the respondent-Insurance Company, denying the factum of accident and claiming the petition have been filed in collusion with the claimants and respondents No.1 and 2. It was further averred that respondent No.1 was not holding a valid and effective driving licence at the time of accident. It was pleaded that the deceased was having no income being a minor child, therefore, no loss had been caused to the claimants, as such, the prayer was made for dismissal of the petition.

4. On the basis of the pleadings and the evidence on the record, the Tribunal awarded the following compensation and held the respondent-Insurance company liable to pay the same to the claimants and in turn recover the amount from the insured, in accordance with law:-

Sr.No.	**Heads**	**Compensation Awarded**
1	Income	₹ 30,000/-
2	Multiplicand	₹30,000/- x 14= ₹4,20,000/-

3	Loss of Love and affection and Last Rites and transportation charges.	₹ 50,000/-
4	Grand Total	₹ 4,70,000/-
	Interest	7.5% per annum

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

6. Learned counsel for the appellants contends that the learned Tribunal has although held claimants to be entitled to the compensation but it has assessed the amount on the lower side. He submits that the deceased happened to be 13 years old, the only son of the claimants, besides three daughters. He submits that the learned Tribunal awarded the meager amount under the head loss of love and affection, funeral and last rites expenses besides assessing the income of the deceased on much lower side. In support of his contentions he referred to the law laid down by Hon'ble Supreme Court in ***National Insurance Co. Ltd. V. Pranay Sethi & Ors. (2017) 16 SCC 680, Sarla Verma and others V. Delhi Transport Corporation and another (2009) 6 SCC 121, Krishan Gopal and another v. Lala and others, 2013 (4) RCR (Civil) 276, United India Insurance Company Ltd. V. Satinder Kaur @ Satwinder Kaur (SC) Law Finder Doc Id #1729112*** and also in ***Sunita Devi and another v. Vijay Pal and others", (Punjab & Haryana) Law Finder Doc ID # 1100951*** and prayed for acceptance of the appeal.

7. Learned counsel representing the insurance company, on the other hand, has assailed these arguments by submitting that the deceased

was minor and not earning, therefore, the learned Tribunal has rightly assessed the notional income. He submitted that as the driver of the offending vehicle had not produced the driving licence being *ex-parte*, therefore, the insurance company has rightly been given the recovery rights by learned Tribunal and hence he prayed for dismissal of the appeal.

8. After considering the rival contentions and perusing the record, so far as the factum of the accident having taken place on 14.11.2013 due to rash and negligent driving on the part of respondent No.1 in driving the offending vehicle, insured with respondent No.3-Insurance Company, resulting in death of 13 years old boy namely Uday @ Uggar Sain, is concerned, the same is amply established on record. It is evident that the deceased was the only son of the claimants, besides having three daughters. No doubt, the income of the minor has not been established on record, however, the learned Tribunal has assessed his notional income at ₹30,000/- per annum, which has been assailed in the present appeal to be on lower side.

9. In order to arrive at just conclusion as to the appropriate notional income of the deceased, a minor who was not earning, the reference has to be made to various judgments on the subject. Hon'ble Supreme Court in ***'Krishan Gopal and another v. Lala and others', 2013 (4) RCR (Civil) 276,*** while dealing with a case relating to road accident in the year 1992, held that in case of death of a child aged 10 years, notional income of ₹30,000/- shall be taken while determining the compensation. Similarly, in ***'Meena Devi v. Nunu Chand Mahto @ Nemchand Mahto & Ors. (SC)***

Law Finder Doc Id #2047445, the notional income of 12 years old deceased in the accident taking place in the year 2003, was assessed to be ₹30,000/- per annum.

10. In ***'Sunita Devi and another v. Vijay Pal and others', (P&H) Law Finder Doc Id # 1100951,*** this Court considering the death of 5 year's old minor in the accident taking place in 2014, assessed the notional income of the minor child as ₹50,000/- per annum. It is further been held therein that the notional income of minor was taken as ₹30,000/- per annum in ***Krishan Gopal's case*** *(supra)* which pertained to the accident taken place in the year 1992, whereas in the given case the accident took place in 2012 and considering the value of Rupee having come down drastically since 1992, the Court considered the notional income of the minor child as ₹50,000/- per annum in that case.

11. The aforesaid judgments directly apply to the facts and circumstances of the present case, so far as the question of notional income of the minor child having died in a motor vehicular accident is concerned. In the present case, Uday @ Uggar Sain, a minor child of 13 years, had died in the motor-vehicle accident on 14.11.2013, therefore, in the light of the above mentioned judgments, his notional income is assessed at ₹50,000/- per annum and in the light of law laid down by Hon'ble Supreme Court of India in ***Sarla Verma's case*** *(supra)* the multiplier of 15 is applied.

12. It is un-rebutted case of the appellants that the deceased was only son of the claimants besides three daughters. The death of the only son aged 13 years of the claimants certainly caused great shock and agony to the

parents. In fact, it is greatest agony for a parent to loose their child during their life time. Thus, in these circumstances, filial consortium deserves to be awarded to the claimants as compensation for the loss of love and affection, care and companionship of the deceased child. In this regard, reference be made to judgment of Hon'ble Supreme Court of India in ***Satinder Kaur's case*** *(supra)*. Resultantly, the claimants are held entitled to filial consortium amounting to ₹88,000/- (44,000/- x 2), besides ₹16500/- towards loss of estate and ₹16,500 towards funeral expenses and last rites.

13. As a result of aforesaid discussion, the appellant/claimants are held entitled to the following enhanced compensation as detailed in the table here in under:-

Sr.No.	Heads	Compensation Awarded
1	Notional Income	₹ 50,000/- per annum
2	Multiplicand	₹50,000/- x 15= ₹7,50,000/-
3	Loss of Estate	₹16500/-
4	Funeral and last rites expenses	₹16500/-
5	Filial consortium	₹44,000/- x 2 = ₹88,000/-
6	Total compensation	₹8,70,000/-
7	Compensation awarded by the Tribunal	₹4,70,000/-
8	Compensation enhanced	₹8,70,000/ - ₹4,70,000/- = **₹4,00,000/-**

The amount of the enhanced compensation aforesaid shall be payable with interest @ 7.5 % per annum from the date of filing of the claim petition till its realization.

14. Respondent No.3- insurance company shall pay the amount of

compensation to the claimants in equal share and in turn shall be entitled to recover the same from the insured as per law. It is further made clear that in case respondent No.3-Insurance Company fails to pay the compensation along with interest @7.5% per annum within a period of three months from today, then the appellants/claimants would be entitled to recover the same along with interest @ 10% per annum.

15. Accordingly the appeal is allowed and the award dated 05.11.2015 passed by Motor Accident Claims Tribunal, Fatehabad, is hereby modified in above terms.

16. Pending application(s) if any also stand disposed of.

(SANJIV BERRY)
JUDGE

14.02.2023
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i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No