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

**FAO-431-2016**
**Pronounced on : 20.03.2023**

Jahul and another …Appellants

Versus

Madan Lal and others ... Respondents

**CORAM: HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Ashish Gupta, Advocate
for the appellants.

Service of respondents No.1 and 2 dispensed with
vide order dated 25.02.2016.

Mr. Punit Jain, Advocate
for respondent No.3-IFFCO Tokio General Insurance Co. Ltd.

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**RITU TAGORE, J**

1. Child namely, Amjad S/o Jahul aged about 15 years on the date of accident i.e. 21.04.2014 while going on foot with his father (petitioner No.1) to Nagina, when reached near Durga Filling Station, Bhadas, was hit by the offending vehicle bearing registration No.HR-28-G-0556, which was approaching from the wrong side of the road, being driven by respondent No.1-driver in a rash and negligent manner. The deceased child suffered serious injuries and succumbed to them on his way to General Hospital Mandikhera.

2. FIR bearing No.67 dated 21.04.2014 under Section 279/304-A IPC was registered at P.S. Nagina on the statement of Jahul (petitioner No.1) eye witness.

3. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), seeking compensation to the tune of Rs.20 lacs with

interest at 18% per annum from the date of the accident till realisation of the amount was filed by appellants-parents of the deceased child.

4. Motor Accident Claims Tribunal, Mewat (hereinafter referred to as 'the Tribunal') granted a compensation of Rs.5,00,000/- in lump sum along with interest @ 9% per annum vide award dated 13.08.2015.

5. The adequacy of grant of such compensation has been questioned by the appellants by filing the present appeal, *inter alia* stating that the Tribunal erred in assessing the amount of compensation while taking the notional income of the deceased at Rs.30,000/- per year by relying on ***'Kishan Gopal and another vs. Lala and others', 2014(1) SCC 244.*** However, the Tribunal failed to notice that the deceased was earning Rs.6,000/- p.m., therefore, his income could not have been assessed on a notional basis. Alternatively, the learned counsel for the appellants by placing reliance on judgments of coordinate Bench of this Court in case ***'Mustak and another vs. Magruddin and others' in FAO No.3925 of 2015*** decided on 16.09.2021 and ***'Sunita Devi and another vs. Vijay Pal and others', 2018 (2) Law Herald 1659*** contended that notional income should be taken as Rs.50,000/- per annum as in the case of ***Kishan Gopal*** (supra), a child aged 10 years had died in a road side accident in 1992 and since then the value of money has come down drastically.

6. It is further submitted by learned counsel for the claimants-appellants that the Tribunal granted no amount towards funeral expenses, loss of estate and filial affection and prayed to award compensation for loss of filial affection for both the parents in terms of decision laid down in ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others' (2018) 18 SCC 130.***

7. Learned counsel for the appellants stated that a just and reasonable compensation ought to have been awarded along with interest as permissible and accordingly prayed for enhancing the compensation as claimed in the petition.

8. Per contra, learned counsel appearing on behalf of respondent No.3-insurance company urged that compensation as awarded by the Tribunal is just and proper. By placing reliance on ***'Rajendra Singh and others vs. National Insurance Company Limited and others', 2020 (3) RCR (Civil) 26,*** the learned counsel contended that in a similar case involving death of a minor in the year 2012, Hon'ble the Supreme Court upheld the grant of compensation of Rs.2.95 lacs by taking the income at Rs.36,000/- per annum and by applying deduction on it at 50%. Accordingly, supported the findings recorded by the Tribunal by submitting that the Tribunal has already granted compensation on higher side and that no benefits of future prospects can be granted in cases of a 'non-earning person'. Accordingly, a prayer was thus made to dismiss the appeal.

9. Having heard learned counsel for the parties, and on perusal of the record and findings of the Tribunal, the liability of the Insurance Company is not in issue; dispute is only with regard to quantum of compensation, as claimed by the claimants.

10. Coming to the facts of the present case, a child namely Amjad aged about 15 years died in the accident in question. As per the pleadings of the parties the deceased was a class 5$^{th}$ student and was studying in a private school, but on oath, petitioner No.1/Jahul father of the deceased child deposed that apart from being class 5$^{th}$ student, he was also working as an agricultural labourer and was earning about Rs.6,000/- p.m. However, the petitioner neither led any evidence like school leaving certificate to show that deceased

was a student nor any other evidence was adduced to prove that deceased was working as an agricultural labourer and was earning as claimed. Petitioner No.1 (PW-1) deposed that he is an agriculturist and owns 2 acres of land and has studied till 8$^{th}$ class. The PMR of deceased (Exh.P-5), records the age of deceased at 13 years. Jahul (PW-1), father has recorded date of birth of the deceased as 20.01.2000. The aforesaid evidence shows that deceased was about 13-14 years old at time of his death and belonged to a lower middle class family of a farmer/agriculturist. There is no school certificate or extra-curricular record of the deceased child produced on record to assess his academic performance and his inclination towards other activities or any of his achievements in other fields. Compensation is to be determined, based on the said factual matrix. Nonetheless, loss of a human life untimely in childhood can never be measured in terms of loss of earnings or monetary loss alone. The income of minor child is incapable of precise fixation. In ***Kishan Gopal*** (supra) a child about 10 years had died in a road accident in the year 1992. Hon'ble the Supreme Court while deciding the case in 2013, enhanced the notional income from Rs.15,000/- to Rs.30,000/- by observing that value of rupee has declined drastically since 1992. Now in 2023, there has been an all the more depreciation in the value of rupee. There is general regression in the economy. Moreover, had this unfortunate accident not consumed the life of the minor child, he would have been a source of help and happiness to his parents-appellants. Determination of compensation should not depend upon the financial position of the victim or the claimant rather on the capacity and ability of the deceased to provide happiness in life of the claimants if the child remained alive. The compensation is granted to compensate for loss of prospective happiness which the claimants would have enjoyed had the child not died at such a young age. In view of the above deliberations, I am inclined to take the income of the deceased child on notional basis at Rs.50,000/- per annum.

11. The plea to add future prospects on determination of the notional income is not acceptable because notional income of a 'non earning person' has been taken and while determining the same, the element of future increase of income has also been taken note of.

12. Likewise, the plea to deduct 50% from the notional income towards loss of dependency as put forth by the counsel for the respondent No.3-insurance company is not acceptable in view of the fact that income of a 'non-earning member' has been taken on a notional basis.

13. However, the grant of compensation on account of loss of filial consortium, loss of estate and funeral charges as granted by the Tribunal is not found to be legally sustainable, in view of legal proposition of law expounded by Hon'ble the Supreme Court of India in '***National Insurance Company Limited vs. Pranay Sethi and others' (2017) 16 SCC 680*****.** Accordingly, it is required to be re-determined.

14. In view of the aforesaid discussion, the award passed by the Tribunal is modified and claimants/appellants are held entitled to the amount of compensation as re-determined hereinbelow:-

| **Sr. No.** | **Heads** | **Amount in Rs.** |
|---|---|---|
| 1. | Loss of dependency<br>(50,000 x 15 multiplier) | Rs.7,50,000/- |
| 2. | Loss of consortium (filial)<br>(44,000 x 2) | Rs.88,000/- |
| 3. | Funeral expenses | Rs.16,500/- |
| 4. | Loss of estate | Rs.16,500/- |
| 5. | Total Compensation | Rs.8,71,000/- |
| 6. | Amount awarded by the Tribunal | Rs.5,00,000/- |
| 7. | **Enhanced amount of compensation** | **Rs.3,71,000/-** |

15. The respondent No.3-Insurance company, is hereby directed to pay the claimants-appellants an enhanced amount of compensation i.e. **Rs.3,71,000/-** (Rupees three lakh seventy one thousand only) awarded hereinabove, over and above, the amount awarded by the Tribunal, at the rate of interest as granted by the Tribunal from the date of filing of the claim petition till its realization, and amount assessed above be deposited within a period of two months from the date of receipt of certified copy of this judgment, with the Tribunal. The remaining conditions of disbursal of the amount as given by the Tribunal shall remain unaltered. Needless to mention that the amount, if any, already deposited by the insurance company shall be adjusted.

16. Additionally, claimants are ordered to be given Rs.15,000/- as litigation expenses, to be payable by the insurance company, in view of the judgment passed by Hon’ble the Supreme Court in case titled ***‘Sidram vs. The Divisional Manager, United India Insurance Co. Ltd. and another’ 2023 (1) R.C.R. (Civil) 44.***

17. No other point was addressed or raised.

18. The appeal stands allowed in the aforesaid terms. No order as to costs.

19. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

**(RITU TAGORE)**
**JUDGE**

**Pronounced on 20th March, 2023**
Poonam Sharma/Manpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No