2023:PHHC:145274

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7678-2015 (O&M)
Date of Decision: November 15, 2023

Parvesh Kumar and another

...Appellants

VERSUS

Bhola Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Tribhawan Singla, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr.Mayank Mathur, Advocate
for respondent No.3.

Mr.Gopal Mittal, Advocate
for respondent No.4.

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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 son Keshav @ Kavya Bansal, aged 5 years, in a motor vehicular accident, which took place on 11.03.2014.

On appraisal of the evidence brought on record, learned Tribunal had granted compensation, to the extent of Rs.2,05,000/- along with interest @ 6% 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 does not call for any further scrutiny, as the respondents, who have been made liable to pay the compensation, have not challenged the Award.

In this backdrop, learned counsel for the appellants has submitted that compensation granted to the appellants-claimants, on account of death of their son Keshav @ Kavya Bansal, 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 the compensation granted by learned Tribunal is just and reasonable and therefore, the appeal deserves to be dismissed.

At the very outset, it is pertinent to mention that deceased Keshav @ Kavya Bansal is asserted to be 5 years old and he was a student. Learned Tribunal had granted lumpsum compensation to the extent of Rs.2,00,000/-, on account of accidental death of Keshav @ Kavya Bansal and besides the same, under the conventional head 'funeral expenses', another sum of Rs.5,000/- has been granted. However, it should be noted that no reason, as such, has been assigned for assessing the lumpsum amount.

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. 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 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"*** 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.

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.

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/-.

On the subject, in case titled ***'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 principle 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 applying 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 and 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 17.08.2000 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 safely be taken to be Rs.30,000/- per annum. Thus, considering the age of the deceased, the suitable multiplier to be applied, in consonance with the aforesaid case law, is '**15**' and so calculating, the loss of dependency comes to be Rs.4,50,000/-.

Besides the aforesaid, amounts are to be paid under conventional heads, namely, loss of estate, loss of consortium 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 this regard, reference is made to decision rendered in ***Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327***, wherein, the Hon'ble Supreme Court, while relying upon ***Magma's case (supra)***, had concluded about the children and mother of the deceased, all to be entitled to Rs.40,000/- each towards filial and parental consortium. Also, reference is made to ***Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85***, wherein also, the Hon'ble Supreme Court had held the claimants of that case, each to be entitled to compensation, on the count of 'spousal consortium' for wife and 'parental consortium' for two children.

In consonance with the observations made in ***Pranay Sethi's case (supra)***, there has to be addition of 10% after every three years from the passing of the judgment, which has since passed by. Thus, on the counts of 'loss of consortium', 'loss of estate' and 'funeral expenses', at first instance, upto three years, it was Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively and for next three years, the compensation was enhanced by 10% to Rs.44,000/-, Rs.16,500/- and Rs.16,500/- respectively, on the aforesaid three counts. After 31.10.2023, the aforementioned amounts, stands further extended by another 10% and now, on the aforesaid counts, it works out to be **Rs.48,400/-**, **Rs.18,150/-** and **Rs.18,150/-**, respectively.

Considering the same, the compensation payable to appellants-claimants, on account of death of Keshav @ Kavya Bansal, is re-appraised, as herein given:-

Loss of dependency	:	**Rs.4,50,000/-**
Loss of consortium	:	**Rs.96,800/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.5,83,100/-**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.5,83,100-2,05,000=Rs.3,78,100/-**.

The impugned Award dated 17.09.2015 stands modified, to the extent, as indicated aforesaid and the remaining terms of disbursal of the compensation, shall be as granted by learned Tribunal.

With the above observations, the present appeal stands allowed.

November 15, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

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