IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-321-2017 (O&M)
Reserved on : 14.7.2023
Date of Decision:- 18.9.2023

IFFCO Tokio General Insurance Company Limited

… Appellant

Versus

Smt. Parmila and others

... Respondents

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Argued by :- Mr. Ankur Gupta, Advocate,
for the appellant.

Mr. Sushil Sheoran, Advocate,
for respondents No.1 and 2.

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KARAMJIT SINGH, J.

1. This appeal has been filed by the appellant insurance company seeking setting aside of the impugned award dated 28.7.2016 passed by Motor Accident Claims Tribunal, Bhiwani (in short, "the Tribunal") whereby the claim petition filed by respondents No.1 and 2 was allowed and they were granted compensation worth Rs. 8 lakh along with interest @ 7.5% per annum from the date of filing the claim petition till its realization on account of death of Payal aged about 15 years daughter of respondents No.1 and 2, in a motor vehicle accident.

2. The brief facts of the case are that on 20.06.2013 Bhale Ram, Deepak Yawan, Dharambir, Payal and Ishwar were travelling in Scorpio bearing registration No.HR17A-1717 driven by Ajay and they were coming back from Khatuji Shyamji. At about 9.00am when they reached in the area of village Mandasi, a bus bearing registration No.RJ-18PA-3855 which was driven in rash and negligent manner by its driver came from the opposite direction and its driver brought the bus on wrong side of road and immediately the said bus struck against Scorpio driven by Ajay. As a result of accident, the occupant of Scorpio and the passengers travelling in bus sustained injuries. On account of said accident Deepak (aged about 17 years) and Yawan (aged 10 years) sons of Bhale Ram/Babita, Payal (aged 15 years) daughter of Suresh Kumar/Parmila, Dharambir son of Santro and Ajay (driver of Scorpio), died. FIR No.84 dated 20.06.2013 was registered at Police Station Mukandgarh, District Jhunjunu (Rajasthan) with regard to aforesaid accident. The offending bus was owned by respondent-Shakuntla Devi and it was insured with IFFCO Tokio General Insurance Company Limited.

3. Bhale Ram and Babita being parents of Deepak and Yawn filed two separate claim petitions under Section 166 of Motor Vehicle Act. Likewise Suresh Kumar and Parmila filed separate claim petition being parents of Payal. Dependents of other deceased also filed separate claim petitions. Even the injured persons also filed separate claim petitions.

4. All the claim petitions were clubbed and following issues were framed by the Tribunal : -

1. Whether accident causing death of Deepak, Ajay, Payal, Yawan, Ajay son of dharambir, Ishwar Singh, Dharambir and injuries to Bhale Ram and Deepika took place on 20.06.2013 due to rash and negligent driving of bus No.RJ 18 PA-3855 by its driver who died in the accident in question, as alleged? OPP.

2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so to what amount and from whom? OPP

3. Whether the driver of offending vehicle namely Ajay son of Daiya Singh was not having a valid driving licence at the time of accident? OPR

4. Whether the claim petitions are not maintainable in the present form? OPR

5. Whether the claimants have no locus standi to file the present claim petitions? OPR

6. Relief.

5. The claimants in order to prove their case, examined PW1 Parmila mother of deceased Payal, PW2 Jagriti Devi (widow of Ishwar Singh), PW3 Babita (mother of deceased Deepak and Yawan), PW4 Kamlesh (widow of Dharambir), PW5 Santosh Kumar Tax Assistant, PW6 Ashok Arora, PW7 Dr. BL Bagri, PW8 Sunita Devi (widow of Ajay

Kumar), PW9 Zile Singh, PW10 Bhale Ram and also produced document Ex.P1. On the other hand respondents produced copy of insurance of policy, Exhibit R1 and documents mark R1 to R5.

6. After hearing the counsel for the parties, the Tribunal disposed of all the connected petitions vide common award dated 28.07.2016. Respondents No.1 and 2 being parents of deceased-Payal were granted compensation worth Rs.8 lakh along with interest. The owner and the insurer of the offending bus were held jointly and severally liable to pay the amount of compensation.

7. Being aggrieved, the appellant insurance company has filed this appeal against the award dated 28.7.2016.

8. I have heard the counsel for the parties.

9. The counsel for the appellant-Insurance Company has *inter alia* contended that deceased-Payal was 15 years of age and as per the law laid down by Hon'ble Supreme Court in **Kishan Gopal and Another** v. **Lala and Ors.** 2013(4) RCR(Civil) 276, the notional income of the deceased is to be taken as ₹30,000/- per annum. However, the Tribunal while passing the impugned order assessed notional income of deceased-Payal as ₹50,000/- per annum. The counsel for the appellant has further contended that as per the ratio laid down in **Kishan Gopal's** case (supra), no compensation under head of future prospects is to be awarded in the present case, as has been rightly held by the Tribunal. The counsel for the appellant has further contended that as per the decision of the Hon'ble Supreme Court in **Kishan Gopal's** case (supra), the parents of deceased are entitled to get

compensation worth ₹5 lacs and thus the award of ₹8 lacs passed in favour of respondents No.1 and 2 is on much higher side and requires to be scaled down to ₹5 lacs.

10. On the other hand the counsel appearing on behalf of the claimants/respondents No.1 and 2 while supporting the impugned award has submitted that in the instant case, the accident took place on 20.06.2013, whereas in **Kishan Gopal's** case (supra), the accident had taken place on 19.7.1992 and in the meantime the value of Rupee has depreciated with passage of time and thus the Tribunal rightly assessed the notional income of deceased as ₹50,000/- per annum. The counsel for respondents No.1 and 2 has further contended that Hon'ble Supreme Court in **Civil Appeal No.10918 of 2013 Puttamma and Ors.** v. **K.L. Narayana Reddy** decided on **9.12.2013** reported in (2013) 15 SCC 45, observed that Second Schedule to Section 163-A of Motor Vehicle Act has now become redundant and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy. The counsel for respondents No.1 and 2 has further contended that the Tribunal applied appropriate multiplier of 15 in the instant case as per the law laid down by the Hon'ble Supreme Court in Civil appeal No.7605 of 2022, **Divya** v. **National Insurance Company Limited** decided on 18.10.2022. The counsel for the respondents No.1 and 2 has also placed reliance upon the judgment in **Chetan Malhotra** v. **Lala Ram (2016)8 AD(Delhi) 415** wherein a case of death of 14

years old child compensation worth Rs.7,80,000/- was granted by the Delhi High Court.

11. I have considered rival contentions raised by counsel for the parties.

12. In the instant case, deceased Payal aged 15 years was studying in a school and the Tribunal awarded compensation worth Rs.8 lacs along with interest to the parents of the deceased. While calculating the said amount of compensation, the Tribunal took the notional income of the deceased as Rs.50,000/- per annum and applied multiplier of 15 and added Rs.50,000/- as special loss to the mother.

13. In case of death of a minor child, there may have been no actual financial benefit derived by its parents during the life time of the child. But this will not necessarily bar the parents to claim compensation on account of untimely accidental death of their child as they had a reasonable expectation of pecuniary benefit if the child had lived.

14. The Hon'ble Apex Court while dealing with such deaths of minor children, in **Lata Wadhawa** v. **State of Bihar** (2001)8 SCC 197 divided the children in two categories- first in age group of 5-10 years old and second in age group 10-15 years old. And taking note of the facts that the environment from which the children were brought the Hon'ble Supreme Court awarded compensation in sum of Rs.2 lacs each for the children in the first category and Rs.4.10 lacs each for the children in the second category, which included Rs.50,000/- each under the conventional head of non-pecuniary damages. In the second

category, the loss of estate was worked out with multiplier of 15 while considering the annual income of such children as Rs.24,000/- each.

15. The Hon'ble Apex Court in **Kishan Gopal's** case (supra) while placing reliance upon the law laid down in **Lata Wadhwa's** case (supra), awarded compensation worth Rs.5 lakh along with interest in a case relating to death of a child aged 10 years in a motor vehicle accident which took place on 19.7.1992.

16. Later on, the Hon'ble Supreme Court in **Puttamma's** case (supra) observed that keeping in view the cost of living, the Central Government is required to amend the Second Schedule to Section 163-A of Motor Vehicle Act, which was enacted by Act 54 of 1994 w.e.f. 14.11.1994. It was further observed that now more than 19 years have passed but no amendment has been made. Cost of living has gone up many fold and the Hon'ble Apex Court further held that Second Schedule as was enacted in the year 1994 has become redundant and irrational due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy.

17. Recently the Hon'ble Apex Court in **Meena Devi** v. **Nunu Chand Mahto and Ors., 2022 ACJ 2478** while dealing with a case relating to death of 12 years old child studying in class-v, enhanced the compensation under Motor Vehicle Act by Rs.3 lac and in total awarded compensation worth Rs.5 lac.

18. Further, in the year 2023, the Co-ordinate Bench of this Court in FAO-431-2016; titled **Jahul and another** v. **Madan Lal and others**

decided on 20.3.2023, enhanced the compensation awarded by the learned Tribunal from Rs.5 lakh to Rs.8.71 lakh in case of death of 15 years old child in a motor vehicle accident which took place on 21.4.2014 while taking into consideration the fact that in **Kishan Gopal's** case (supra), where a child aged about 10 years old had died in a road accident in 1992 and Hon'ble Supreme Court while deciding the case in 2013, enhanced the notional income of the deceased from Rs.15,000/- to Rs.30,000/- per annum by observing that rupee has devalued drastically since 1992. Coordinate Bench further held that now in 2023, there has been all the more depreciation in the value of rupee and thus, assessed the notional income of the deceased as Rs.50,000/- per annum.

19. Hon'ble Apex Court in **National Insurance Company Limited** v. **Pranay Sethi** 2017(4) RCR (Civil) 1009, held that reasonable figures under conventional heads namely loss of estate, loss of consortium and funeral expenses should be enhanced @ 10% in every 3 years.

20. The Hon'ble Apex Court in **Civil Appeal N.7605 of 2022** titled as **Divya** v. **National Insurance Company Ltd.** decided on **18.10.2022** has held that as regards the cases where the age of victim happens to be upto 15 years, the multiplier of "15" is to be applied.

20. In light of the observations made by Hon'ble Apex Court in **Puttamma's** case (supra) and the ratio laid down in **Pranay Sethi's** case (supra) coupled with settled position of law, as has been discussed above, notional income of a child aged about 15 years, who died in a motor vehicle accident, is to be assessed on the basis of

present cost of living and current rate of inflation and increased life expectancy. In the given circumstances, in the present case, wherein the child aged about 15 years who was studying in a school, died due to motor vehicle accident on 20.6.2013, the learned Tribunal rightly assessed the notional income of the deceased as Rs.50,000/- per annum and computed the total compensation while applying multiplier of 15 and rightly added Rs. 50,000/-as special loss to the mother.

21. So, there is no illegality or infirmity in the impugned award. Consequently, the appeal filed by the insurance company is hereby dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

18.9.2023
Gaurav Sorot/Paritosh Kumar

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No