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

FAO-322-2017
Reserved on : 14.7.2023
Date of Decision:- 18.9.2023

IFFCO Tokio General Insurance Company Limited

… Appellant

Versus

Bhale Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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

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 i.e. Bhale Ram and Babita was allowed and they were granted compensation worth ₹ 8 lakh along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization on account of death of Yawan aged about 10 years son 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 occupants 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 Yawan 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 claim petitions vide common award dated 28.07.2016. Dependents/LRs of Yawan were granted compensation worth Rs.8,00,000/- and insurer were also directed to pay interest @ 7.5% p.a. from the date of filing of claim petition and in case the awarded amount is not deposited within 90 days than the awarded amount is to be paid @ 9% p.a from the date of filing of the claim petition. The owner and insurer of the offending bus were held liable to pay the compensation, jointly and severally.

7. Being aggrieved appellant-insurance company has filed this appeal against the award dated 28.7.2016 passed by the learned Tribunal.

8. I have heard the counsel for the parties.

9. The counsel for the appellant-Insurance Company has *inter alia* contended that deceased-Yawan was 10 years of age and as per the law laid down by Hon'ble Supreme Court in **Kishan Gopal and Another vs. 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-Yawan 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. vs. 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 has rightly applied multiplier of 15 in the instant case.

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

12. In the instant case, deceased-Yawan was 10 years of age and was studying in 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 ₹ 50,000/- per annum and applied multiplier of 15 and added ₹ 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 vs. 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 ₹ 2 lacs each for the children in the first category and ₹ 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 lacs 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. The Hon'ble Apex Court further observed that even after passage of 19 years, no amendment has been made by the Central Government. 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 in a motor vehicle accident, which took place on 29.7.2003, enhanced the compensation under Motor Vehicle Act by ₹ 3 lacs and in total awarded compensation worth ₹ 5 lacs.

18. Recently in the year 2023 the Co-ordinate Bench of this Court in **FAO-431-2016** titled as **Jahul and Another** v. **Madan Lal and Ors.** decided on **20.3.2023** enhanced the compensation awarded by the Tribunal by ₹ 5 lacs to ₹ 8.71 lacs in a 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, the Supreme Court while deciding the case in 2013,

enhanced the notional income of the deceased from ₹ 15,000/- to ₹ 30,000/- by observing that Rupee has devalued drastically since 1992 and now in 2023 there has been all the more depreciation in the value of Rupee and thus assessed the notional income of deceased as Rs.50,000/- per annum.

19. The Hon'ble Apex Court in **Civil Appeal No.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. The Hon'ble Apex Court in **National Insurance Company Ltd.** 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 at the rate of 10% in every 3 years.

21. In the light of the observations, as discussed above, made by the Hon'ble Apex Court in **Puttamma's** case (supra) and the ratio laid down in **Pranay Sethi's** case (supra), the notional income of a child aged about 10 years, who died in a motor vehicle accident is to be assessed on the basis of the present cost of living and current rate of inflation and increased life expectancy. Further in **Meena Devi's** case (supra) wherein death of 12 years old school boy died in a motor vehicle accident which took place in 2003, notional income of the deceased was assessed as ₹ 30,000/- per annum. In the given circumstances, in the instant case, wherein child aged about 10 years died due to motor vehicle accident on 20.6.2013, it will be appropriate

to assess the notional income of deceased-Yawan as ₹ 40,000/- per annum and thus, the notional income of the deceased as assessed by the learned Tribunal as ₹ 50,000/- per annum is on the higher side. However, the learned Tribunal has rightly applied multiplier of 15 in the present case. The dependency of the claimants/respondents No.1 and 2 on deceased-Yawan comes out to be ₹ 40,000 x 15 = ₹ 6,00,000/-. As per the law laid down in **Pranay Sethi's** case (supra), loss of consortium is assessed as ₹ 52,000/-. The claimants-respondents No.1 and 2 being parents are also entitled to get additional amount of ₹ 52,000/- on account of loss of love and affection in light of ratio laid down by Hon'ble Apex Court in **Magma General Insurance Company Limited** v. **Nanu Ram @ Chuhru Ram** (2018) 18 SCC 130 and **Shri Ram General Insurance Co. Ltd.** v. **Bhagat Singh Rawat & Ors**.; 2023 (2) TAC 713 (SC) and funeral expenses worth ₹ 19,500/-. Thus, total amount of compensation comes out to be ₹ 7,23,500/-. So, in the present case, the claimants-respondents No.1 and 2 are entitled to get compensation worth ₹ 7,23,500/- along with interest at the rate granted by the learned Tribunal. The award passed by the learned Tribunal beyond the aforesaid amount is hereby set aside. Consequently, the appeal filed by the appellant is partly allowed in the aforesaid terms.

(KARAMJIT SINGH)
JUDGE

18.9.2023
Gaurav Sorot/Paritosh Kumar

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No