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

FAO-6766-2018 (O&M)
Reserved on : 14.7.2023.
Date of Decision:- 18.9.2023

The New India Assurance Company Limited

… Appellant

Versus

Sangeeta Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :- Mr. Vinod chaudhri, Advocate,
for the appellant.

Mr. Sushil Sheoran, Advocate,
for respondent No.1.

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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 5.7.2018 passed by Motor Accident Claims Tribunal, Patiala (in short, "the Tribunal") whereby the claim petition filed by claimant No.1/respondent No.1-Sangeeta Devi was allowed and she was granted compensation worth ₹ 11,64,000/- along with interest @ 7% per annum from the date of filing the claim petition till its realization on account of death of Sahil @ Sahil Chaudhary aged about 15 years son of respondents No.1 and 2 in a motor vehicle accident.

2. The brief facts of the case are that on 20.08.2017, Sahil @ Sahil Chaudhary, Aman, Ravi Kumar and Raj Sharma were going from Rajpura towards Chandigarh in a three-wheeler No.CH-78T-2712 and

at about 3.30 am when they reached near Shahi Furniture Store on Rajpura-Banur Road, a car having registration No.PB-65-AH-3203 came from behind and was driven in rash and negligent manner by respondent-Rahul Sharma and immediately the said car struck against the three-wheeler as a result thereof all the occupants of three-wheeler fell on the road and sustained injuries. Sahil @ Sahil Chaudhary was shifted to AP Jain Hospital Rajpura, where he died during treatment. FIR with regard to said accident was registered in police station Shambu against driver of the offending car. The said car was owned by respondent-Pawan Kumar and was insured with the New India Assurance Company Ltd. That deceased was 15 years of age and was student of 9th class and he was having bright career and due to his untimely death both the claimants (parents) suffered irreparable loss and they filed claim petition claiming compensation under Section 166 of Motor Vehicle Act.

3. The claim petition was contested by all the respondents and they filed separate written statements wherein the factum of accident in question was denied and it was pleaded that false FIR was registered by the police against driver of car No.PB-65-AH-3203. The insurance company also took objections that the driver of the offending car was not having valid and legal driving licence and that the claim petition is bad for non-joinder of owner and driver of a three-wheeler No.CH-78T-2712.

4. On the pleadings of the parties, the following issues were framed in the present case: -

1. Whether Sahil @ Sahil Choudhary son of Rajesh Choudhary suffered injuries in a motor vehicular accident, which took place on 20.08.2017 at about 3;30 a.m., within the jurisdiction of PS Shambu, District Patiala, due to rash and negligent driving of Car bearing registration no.PB-65-AH-3203 by respondent No.1, to which he succumbed? OPP.

2. Whether the claimants are entitled to recover any compensation if so to what amount and from whom? OPP.

3. Whether respondent No.1 was not having a valid and effective driving licence at the time of alleged accident, if so its effect? OPR-3.

4. Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties? OPR-3.

5. Whether the claim petition is not maintainable in the present form? OPR-3.

6. Relief.

5. The counsel for the claimants examined PW1 Rajesh Chaudhary (father of the deceased) who produced copy of post mortem report, Exhibit P1. PW2 Aman (eye-witness) proved the factum of accident and also proved FIR Ex.P2.

6. Counsel for respondent No.1 tendered copy of driving licence of driver of offending car Ex.R3. Respondent No.2 placed on record

copy of registration certificate of offending car Ex.R2. Insurance policy of offending car Ex.R1 was placed on record by counsel for insurance company.

7. After hearing the counsel for the parties, the Tribunal awarded compensation worth ₹ 11,64,000/- along with interest @ 7% per annum from the date of filing of claim petition till its realization, in favour of claimant No.1/respondent No.1 Sangeeta Devi. All the respondents were held liable jointly and severally to pay the compensation. While assessing the quantum of compensation the MACT calculated notional income of the deceased to be ₹ 7500/- per month and applied multiplier of 18 and further held that claimant No.1 is also entitled to get another 40% as future prospects, ₹ 15,000/- towards funeral expenses and ₹ 15,000/- towards loss of estate.

8. The Insurance Company being aggrieved by the award has filed this appeal.

9. I have heard the counsel for the parties.

10. The counsel for the appellant-Insurance Company has *inter alia* contended that deceased-Sahil 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 wrongly assessed notional income of deceased-Sahil as ₹7500/- per month and applied multiplier of '18'. 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. It has been further contended that the Tribunal wrongly awarded compensation worth ₹ 3,24,000/- on account of 40% future prospects over the assessed income and thus the award of ₹ 11,64,000/- passed in favour of respondent No.1 is not sustainable and requires to be reduced to amount of ₹ 5 lakh as per the decision of Hon'ble Supreme Court in **Kishan Gopal's** case (supra).

11. On the other hand the counsel appearing on behalf of the claimant/respondent No.1 while supporting the impugned award has submitted that in the instant case, the accident took place on 28.8.2017, 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 ₹7500/- per month. The counsel for respondent No.1 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 respondent No.1 has further contended that the Tribunal applied appropriate multiplier of 18 in the instant case as per the law laid down by the Hon'ble Supreme Court in **Sarla Verma** v. **Delhi**

Transport Corporation, (2009)6 SCC 121. The counsel for respondent No.1 has further contended that as per the law laid down by Hon'ble Supreme Court in **National Insurance Company** v. **Parney Sethi,** 2017(4) RCR(Civil) 1009, the Tribunal rightly awarded future prospects worth ₹ 3,24,000/- and ₹ 15,000/- towards the funeral expenses and ₹ 15,000/- towards loss of estate.

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

13. In the instant case, deceased Sahil was 15 years of age and the Tribunal awarded compensation worth ₹ 11,64,000/- along with interest to the mother of the deceased. While calculating the said amount of compensation, the Tribunal took the notional income of the deceased as ₹ 7500/- per month and took dependency of claimant No.1 as ½ and applied multiplier of 18 and also added ₹ 3,24,000/- as future prospect and ₹ 30,000/- towards funeral expenses and loss of estate.

14. 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.

15. 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 ₹ 2 lacs each for the children in the first category and ₹ 4.10 lacs each for the children in the second category, which included ₹ 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 ₹ 24,000/- each.

16. The Hon'ble Apex Court while placing reliance upon the law laid down in **Lata Wadhwa's** case (supra) awarded compensation worth ₹ 5 lacs along with interest in a case relating to death of a child aged 10 years in a motor vehicle accident in **Kishan Gopal's** case (supra).

17. 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 Supreme Court further observed that more than 19 years have passed but no amendment has been made. Cost of living has gone up many fold and 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.

18. 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.

19. 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 ₹ 15,000/- to ₹ 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 ₹ 50,000/- per annum.

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.

21. In the instant case, the deceased aged about 15 years was having no income and as such, his notional income is to be assessed as per settled position of law as has been discussed above and thus, taking into consideration the fact that the accident in question took place on 20.8.2017 which resulted in death of 15 years old child, the notional

income of the deceased is considered as ₹ 50,000/- per annum and multiplier of 15 will be applicable and thus, loss of dependency in this case, comes out to be ₹ 7,50,000/-. Loss of consortium comes out to be ₹ 48,000/- as per the ratio laid down in **Pranay Sethi's case** (supra). Respondent No.1 being mother is also entitled to get additional amount of ₹ 48,000/- on account of loss of love and affection in light of law laid down by Hon'ble Apex Court in **Magma General Insurance Company Limited** v. **Nanu Ram @ Chuhru Ram** (2018) 18 SCC 130 and funeral expenses worth ₹ 18,000/-. Thus, total compensation comes out to be ₹ 8,64,000/-. So, in the present case, respondent No.1 is entitled to get compensation worth ₹ 8,64,000/- 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