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

FAO-1180-2016 (O&M)

Date of Decision : 28.02.2023

Kamaluddin and another **......Appellants.**

vs.

Rohtash and others **......Respondents.**

CORAM: - HON'BLE MR JUSTICE SANJIV BERRY

Present: - Mr. Abhimanyu Singh, Advocate, and
Mr. Shiv Kumar Rana, Advocate,
for the appellants.

Mr. Rajesh K. Sharma, Advocate,
for respondent No. 3-Insurance Company.

SANJIV BERRY, J.

Instant appeal has been preferred by the claimants-appellants against the Award dated 10.10.2013 passed by the Motor Accident Claims Tribunal, Mewat, Nuh, (hereinafter referred to as the 'Tribunal') whereby the claimants-appellants had been awarded compensation @ ₹ 2,50,000/- along with interest @ 7.5 % per annum from the date of filing the claim petition till its realization.

2. Briefly stated, facts of the case are that the claimants-Kamaluddin and another, filed a claim petition stating therein that on 19.02.2011 at about 10.00 a.m., daughter of the claimants/appellants, namely Ruksaar (since deceased), while crossing the road while going to her uncle's house was hit by a Hywa Dumper bearing registration No. HR-39-A-6391, being driven by respondent No. 1, in a rash and negligent manner. As a

result, she fell down on the road and front tyre of the offending vehicle crossed over the back of Ruksaar and she succumbed to the injuries on way when she was being shifted to Safdarjung Hospital, New Delhi from CHC Nuh. Thereafter, FIR No. 82 dated 19.02.2011 was registered under Sections 279, 304-A, IPC at Police Station Nuh.

3. On notice the petition was contested by respondent No.2 and 3. Respondent No.1 despite service did not appear and was proceeded *ex-parte*.

4. On the basis of the pleadings and the evidence on record, the Tribunal after taking the notional income of the deceased as ₹15,000/- per annum and applying the multiplier of 15, awarded compensation to the tune of ₹2,25,000/- besides ₹25,000/- on account of last rites and transportation expenses. Hence, a total amount of compensation of ₹2,50,000/- was awarded along with interest @ 7.5% per annum from the date of filing of petition till its realization.

5. I have heard learned counsel for the parties and also perused the record.

6. Learned counsel for the appellants contends that the claimants happen to be the parents of the deceased Ruksaar, who was 8 years at the time of the accident, as is evident from the Post Mortem Report Ex.P8. He submitted that learned Tribunal rightly observed her death due to rash and negligent driving on the part of respondent No.1 in driving the vehicle owned by respondent No.2 and insured with respondent No.3 vide policy Exhibit R-4 and as such the respondents have rightly been held jointly and severally liable to pay the compensation. However, he has assailed the findings given by the learned Tribunal in awarding compensation to be on

lower-side. He submitted that although the deceased was not earning and notional income had to be assessed but taking her notional income merely ₹ 15,000/- per annum is not justifiable. He further stated that the learned Tribunal has awarded meager amount under the heads love and affection, last rites and transportation expenses. He as such prayed for acceptance of appeal by relying upon the judgments cited as ***Sarla Verma and others V. Delhi Transport Corporation and another (2009) 6 SCC 121,National Insurance Co. Ltd. V. Pranay Sethi & Ors. (2017) 16 SCC 680, United India Insurance Company Ltd. V. Satinder Kaur @ Satwinder Kaur (SC) Law Finder Doc Id #1729112,Sunita Devi and another v. Vijay Pal and others", (Punjab & Haryana) Law Finder Doc ID # 1100951*** and also in ***Krishan Gopal and another v. Lala and others, 2013 (4) RCR (Civil) 276.***

7. Learned counsel representing the insurance company, on the other hand, submitted that the deceased being a child, aged 8 years, the learned Tribunal has rightly assessed the notional income and awarded just compensation as such and the same requires no interference.

8. Considering the rival arguments in the light of the evidence on record, it is amply proved that the deceased Ruksaar had died in a motor vehicle accident on 19.02.2011 caused due to rash and negligent driving of respondent No.1 while driving the offending vehicle in a rash and negligent manner. The offending vehicle is owned by respondent No.2 and insured with respondent No.3 vide policy Ex.R-4. The learned Tribunal, therefore, rightly appreciated the evidence in arriving at conclusion that the death of Ruksaar, aged 8 years, was caused due to rash and negligent driving of respondent No.1 and as such had rightly held the respondents to be jointly

and severally to pay compensation to the claimants being the parents of the deceased.

9. As regards the amount of compensation is concerned the learned counsel for the appellants/claimants has assailed the same to be on lower side, as regards the assessment of notional income and also on account of the compensation awarded under the heads loss of love and affection, funeral and transportation charges.

10. It is worth mentioning here that in assessing the notional income of deceased, who happens to be a minor, reference has to be made to various judgments on the subject.

11. In ***'Krishan Gopal and another v. Lala and others', 2013 (4) RCR (Civil) 276,*** while dealing with a case relating to road accident in the year 1992, held that in case of death of a child aged 10 years, notional income of ₹30,000/- shall be taken while determining the compensation. Similarly, in ***'Meena Devi v. Nunu Chand Mahto @ Nemchand Mahto & Ors. (SC) Law Finder Doc Id #2047445***, the notional income of 12 years old deceased pertaining to the accident taking place in the year 2003, was assessed to be ₹30,000/- per annum.

12. Further, it has been held in ***'Sunita Devi and another v. Vijay Pal and others', (P&H) Law Finder Doc Id # 1100951,*** this Court considering the death of 5 year's old minor in the accident taking place in 2014, assessed the notional income of the minor child as ₹50,000/- per annum.

13. Applying the aforesaid decisions to the facts and circumstances of the present case, it is observed that in the present case a minor of 8 years

had died in the motor vehicular accident on 19.02.2011, so it would be appropriate to assess her notional income as ₹50,000/- per annum and in the light of the law laid down in ***Sarla Verma's*** case (*supra*) the multiplier of 15 is to be applied.

14. The claimants happens to be unfortunate parents of the deceased minor and certainly the death of their minor daughter who have caused great shock and agony to them. In these circumstances, in the light of the judgment of Hon'ble Supreme Court in ***Satinder Kaur's*** case (*supra*) both the claimants are held entitled to filial consortium as compensation for loss of love and affection, care and companion of the deceased minor. On this core, the claimants are held entitled to filial consortium amounting to ₹ 88,000/- (44,000/- x 2). Further in the light of the law laid down in ***Pranay Sethi's*** case *(supra),* the claimants are also held entitled to ₹16,500/- for loss of estate and ₹16,500/- funeral expenses and last rites.

15. As a result of aforesaid discussion, the appellants/claimants are held entitled to the following enhanced compensation as detailed in the table here in under:-

Sr.No.	Heads	Compensation Awarded
1	Notional Income	₹ 50,000/- per annum
2	Multiplicand	₹50,000/- x 15= ₹7,50,000/-
3	Loss of Estate	₹16500/-
4	Funeral and last rites expenses	₹16500/-
5	Filial consortium	₹44,000/- x 2 = ₹88,000/-
6	Total compensation	₹8,70,000/-
7	Compensation awarded by the Tribunal	₹2,50,000/-
8	Compensation enhanced	₹8,70,000/ - ₹2,50,000/- =**₹6,20,000/-**

The amount of the enhanced compensation aforesaid shall be payable with interest @ 7.5 % per annum from the date of filing of the claim petition till its realization.

16. Respondent No.3- insurance company shall pay the amount of compensation to the claimants in equal share and in turn shall be entitled to recover the same from the insured as per law. It is further made clear that in case respondent No.3-Insurance Company fails to pay the compensation along with interest @7.5% per annum within a period of three months from today, then the appellants/claimants would be entitled to recover the same along with interest @ 10% per annum.

17. Accordingly, the appeal is allowed and the award dated 10.10.2013 passed by Motor Accident Claims Tribunal, Mewat, Nuh, is hereby modified in above terms.

18. Pending application(s) if any also stand disposed of.

(SANJIV BERRY)
JUDGE

28.02.2023
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(i) Whether speaking/non speaking yes/no
(ii)Whether reportable/non reportable yes/no