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

**Reserved on 23rd of October, 2024
Pronounced on 26th November, 2024**

**FAO No.2019 of 1995 (O&M)
IOIN-CM-6632-CII-2015 (O&M)**

Meham Singh and another ....Appellants

Versus

Joginder Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sagar Aggarwal, Advocate
for the appellants.

Mr. G.S. Sandhu, Advocate
for respondent No.2.

Mr. Gopal Mittal, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

Claimants are in appeal seeking enhancement of compensation.

2. Incident related to unfortunate death of a six year old child Kuldeep who died in a motor-vehicular accident dated 23rd of March, 1994. Death of the child in the vehicular accident is not disputed. Tribunal awarded a lump sum amount of Rs.25000/-.

3. Two issues have been raised by counsel for the appellants. The first issue relates to enhancement of compensation and the second issue relates to liability of the Insurance Company.

4. This Court in the case of **'Hari Om and another vs. Mohd. Yusuf Teli and others', 2024(3) RCR(Civil) 842** while awarding compensation on account of death of a 16 year old child adopted multiplier method taking notional income of the child @ Rs.50,000/- per annum and awarded a sum of Rs.7,19,500/-. Supreme Court in the case of '**Kusmi Devi vs. Md. Kasim and another', 2024(1) PLR 49** while dealing with the death of a 3 year old child in accident dated 25th of August, 1994 awarded lump sum compensation to the tune of Rs.6.00 lacs.

5. In order to support his contention that the Insurance Company should be made liable to pay compensation to the claimants, counsel relies upon law laid down by Supreme Court in the case of **'Sonkunwarbai and Others vs. Oriental Insurance Company Limited and others' SLP (Civil) No.22971/2018**, '**Parminder Singh vs. New India Assurance Co. Ltd. and others', (2019)7 SCC 217, 'Ram Chandra Singh vs. Rajaram and others', (2018) 8 SCC 799**, **Iffco Tokio General Insurance Company Ltd. vs. Pawan Kumar Taneja and others, 2023(4) RCR (Civil) 907**.

6. Finding that the date of accident in ***Kusmi Devi's*** case (supra) is also of the year 1994 wherein the Supreme Court awarded an amount of Rs.6.00 lacs on account of death of a 3 year old child, this Court finds that the said precedent serves as adequate guide. Resultantly, compensation payable to the claimants on account of death of Kuldeep Singh, a 6 year old child in the present case is enhanced to Rs.6.00 lacs.

7. Coming on to the issue of liability, the Tribunal relied upon Annexures R-1 and R-2 issued by Regional Transport Authorities denying issuance of licence. Tribunal found that in terms of Section 35 of the Evidence Act, 1872 the communications were *per se* admissible in evidence and thus absolved the insurer of his liability. In the considered opinion of this Court, Tribunal completely misread the ratio of law laid down in the case of **'State of Bihar and others vs. Shri Radha Krishna Singh and others', AIR 1983 Supreme Court 684**.

8. Apex Court in **Shri Radha Krishna Singh'**s case (supra) held that for a document to fall within the four corners of Section 35 of the Evidence Act, the following three conditions need to be fulfilled :

> "(1) the document must be in the nature of an entry in any public or other official book, register or record,
> (2) it must state a fact in issue or a relevant fact,
> (3) the entry must be made by a public servant in the discharge of his official duties or in performance of his duties especially enjoined by the law of the country in which the relevant entry is kept."

9. Documents Exhibits R-1 and R-2 cannot be said to have been made by a public servant in discharge of his official duty. It is only the Communications, Exhibits R-1 and R-2 which have been placed on record without the corresponding communication in response to which, Exhibits R-1 and R-2 were written. The authors of the communications have not been examined. In the considered opinion of this Court, even if the aforesaid documents are held to be admissible the same cannot be held to

have been proved in accordance with law. Thus, the Tribunal erred in relying upon Exhibit R-1 and R-2 to hold that the driving licence possessed by respondent No.1 was fake.

10. In view of above, this Court finds that findings of the Tribunal on issue No.3 cannot be sustained. Resultantly, Insurance Company is held to be jointly and severally liable to pay the compensation as awarded hereinabove.

11. As a sequel of the discussion held hereinabove, the impugned award is ordered to be modified. Findings on issues No.2 and 3 stand reversed/modified to the extent as stated hereinabove.

12. The claimants shall also be entitled for interest @ 9% per annum from the date of filing of the claim petition till the date of actual realization.

13. Instant appeal is disposed off accordingly.

14. Pending application(s)/IOIN, shall also stand disposed off.

November 26, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No