IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2234-2023(O&M)
Date of Decision: July 24, 2024

United India Insurance Company Limited

...Appellant

VERSUS

Neero alias Veero Bai and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Satpal Dhamija, Advocate
for the appellant.

None for the respondents.

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ARCHANA PURI, J.

The present appeal has been filed by the insurance company, thereby, assailing the Award dated 21.11.2022 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation to the parents of Sahil @ Shalu, who was 4 years old, who died in a motor vehicular accident, which took place on 07.10.2019.

On appraisal of the evidence, brought on record, learned Tribunal, had concluded about the accident to have taken place, due to rash and negligent driving of the tractor bearing registration No.HR-44G-3136, driven by respondent-Om Parkash, which caused death of Sahil @ Shalu, who was accompanying his mother, in a tempo Auto.

Considering the age of the deceased to be 4 years and also considering the relationship of the claimants with the child, the notional income of the deceased was taken as Rs.50,000/- per annum and by applying the multiplier of '15', the compensation was worked upon as Rs.5,75,000/- and besides the same, another amount of Rs.15,000/- was granted, under the conventional heads. In total, the compensation was granted to the extent of Rs.7,65,000/-.

Feeling aggrieved with the extent of compensation, to assail the quantum, the appellant-insurance company, has filed the present appeal.

Learned counsel for the appellant-insurance company, at the very outset, has assiduously submitted that the age of the child namely, Sahil @ Shalu, who died in the accident, as such, is not disputed. He was 4 years old. Considering his age, it is submitted that the notional income, so taken by learned Tribunal is on higher side and thus, the consequential work on of the compensation is also on higher side. Learned counsel submits that settled position of law, as laid down in ***'Kishan Gopal and another v/s Lala and others, 2013(4) RCR (Civil) 276'*** and also while making further reference to ***'Meena Devi v/s Nunu Chand Mahto @ Nemchand Mahto and others, 2022(4) RCR (Civil) 553'***, submitted that the notional earnings ought to be taken as Rs.30,000/- per annum and therefore, made a prayer for reduction of the compensation awarded by learned Tribunal. As such, a prayer has been made for the acceptance of the appeal.

In pursuance of the notice issued, none had appeared on behalf of the respondents, despite service.

Before proceeding further, beneficial reference is made to '***State of Haryana and another vs. Jasbir Kaur and others, 2003(4) RCR (Civil) 140***', wherein, it was held as herein given:-

> *"It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "**damages**" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just" denotes equitability, fairness and reasonableness, and non-arbitrary, if it is not so it cannot be just. (**See Helen C. Rebello v. Maharashtra SRTC, 1998(4) RCR (Civil) 177 (SC): 1991(1) SCC 90**)."*

The determination of damages for loss of human life, is extremely difficult task and it becomes all the more baffling, when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn, the question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases, involves a good deal of guesswork.

In ***Lata Wadhwa and others vs. State of Bihar and others, 2001(4) RCR (Civil) 673 (SC)***, the Hon'ble Supreme Court, held that while computing compensation, distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years, can be made. Further, it was observed that the compensation determined for the children, for all age group, could be doubled, of what is stated in Schedule II of the Motor Vehicle Act, as the determination was made grossly inadequate and the loss of children is irrecoupable and no amount of money could compensate the parents. The principles laid down in aforesaid case, was made applicable to the facts in the case of ***Krishan Gopal's case (supra)*** and it was thus considered as 'just and reasonable' to take notional income of Rs.30,000/- and applying the multiplier as laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*** and observed as herein given:-

> *"In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of* ***Sarla Verma v. Delhi Transport Corporation****, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000x15=4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in* ***Kerala SRTS v. Susamma Thomas****, which is referred to in Lata Wadhwa's case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."*

In ***'Kurvan Ansari alias Kurvan Ali and another v/s Shyam Kishore Murmu and another, 2022 (1) SCC 317'***, the Hon'ble Supreme Court was of the view that it was necessary to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living and the notional income of a child aged about 10 years was considered as Rs.10,000/-.

Before adverting to the case in hand, it is pertinent to mention that in ***Krishan Gopal's case (supra)***, the accident had taken place on 19.07.1992. In ***Meena Devi's case (supra)***, the Hon'ble Supreme Court had considered the case of death of a 12 year child, in a motor vehicular accident and while granting compensation, had observed that the principles laid down in case of ***Kishan Gopal's case (supra)***, are aptly applicable to the facts of the case (in hand), and thus, took the notional earnings as Rs.30,000/- including future prospects and applied the multiplier of **'15'** (in view of the decision of the Hon'ble Apex Court ***Sarla Verma's case (supra)*** and the loss of dependency was worked upon to be Rs.4,50,000/- and addition of Rs.50,000/- was made under the conventional heads. The total compensation was worked upon as Rs.5,00,000/-.

However, it should be noted that in ***Meena Devi's case (supra)***, the date of accident was 29.07.2003.

Now, adverting the case in hand, minor child Sahil @ Shalu was 4 years old, at the relevant time and the accident had taken place on 07.10.2019. Taking into account the inflation, devaluation of rupee and high cost of living, in the fitness of the circumstances, the notional income of the deceased Sahil @ Shalu, can conveniently be taken as Rs.40,000/- per annum and by applying the multiplier of '15', as applied by learned Tribunal, the loss of dependency comes to be Rs.40000x15=**Rs.6,00,000/-**.

As per ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, whosoever are the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or ‘filial’ consortium, as required. Thus, the parents the deceased, are entitled to ‘filial’ consortium, on the count of ‘loss of consortium’.

As per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the count of ‘loss of consortium’, works out to be, Rs.48,400/- to each of the claimants i.e. Rs.48400x2=**Rs.96,800/-** and on the similar pattern, on the count ‘funeral expenses’, the compensation payable, comes to be **Rs.18,150/-**.

Considering the same, the compensation payable to claimants, on account of death of Sahil @ Shalu, is re-computed, as herein given:-

Loss of dependency	**:**	**Rs.6,00,000/-**
Loss of consortium	**:**	**Rs.96,800/-**
Funeral expenses	**:**	**Rs.18,150/-**
Total	**:**	**Rs.7,14,950/-**

As such, the amount so awarded by learned Tribunal stands reduced from Rs.7,65,000/- to Rs.7,14,950. The impugned Award dated 21.11.2022 stands modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

With the above observations, the present appeal stands allowed.

July 24, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes/No