



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

207

FAO-743-2007
Date of Decision: July 25, 2024

Kalindi Devi and anotherAppellant(s)

Vs.

Jasbir Singh and othersRespondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Ekta Thakur, Advocate for the appellants.

Mr. R.C. Kapoor, Advocate
for respondent/Insurance Company

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been filed against the award dated 03.11.2006 passed in the claim petition filed under Section 166 of Motor Vehicles Act, by the learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal), for enhancement of the compensation granted to the appellants, who are the parents of the deceased.

2. The brief facts of the case are that the on 28.04.2005, Sumit Kumar Rao, the son of the appellants was going on the road adjoining to his house No.1127-28, Sector 56, Chandigarh and respondent No.1-Jasbir Singh came there driving his truck bearing Registration No.PB-12-B-1292 from the side of Chandigarh at a fast speed and in a rash and negligent manner and struck his vehicle against Sumit Kumar Rao, as a result, he sustained fatal injuries resulting to his death.

3. Upon notice, respondents appeared and denied the factum of claim.



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4. From the pleadings of the parties, the Tribunal framed the following issues:-

(i) *Whether Sumit Kumar Rao died in a motor vehicle accident, which took place on 28.04.2005 in the area near English Wine Shop on road in Sector 56, Chandigarh on account of rash and negligent driving of truck bearing No. PB-12-B-1292 ? OPP.*

(ii) *Whether the claimants are entitled to be compensated for the death of Sumit Kumar Rao in the above accident? If so how much and from whom ? OPP*

5. After hearing the parties and considering the evidence on record, learned Tribunal awarded the compensation to the tune of Rs.1,50,000/- to the claimants.

6. Learned counsel for the appellants contend that this is a case of death of 03 years old child whereby the award to the tune of Rs.1,50,000/- as granted by the Tribunal, is on the lower side. For this, she relied upon the judgment passed by Hon'ble the Apex Court in Civil Appeal No.3699 of 2023 titled as "***Kusmi Devi Vs. Md. Kasim and another***". Further, she prays for the enhancement of the compensation.

7. Learned counsel for respondent No.3—Insurance Company vehemently argues on the lines of the award and contends that no enhancement should be granted since the award has rightly been passed.

8. I have heard the learned counsel for the parties and perused the whole record of this case with their able assistance.

9. The relevant portion of the award is reproduced as under:-

"12. Thus from all that has been discussed above it is concluded that the accident had occurred due to the rash



and negligent driving of the offending truck by respondent No.1, issue No.1 is answered in favour of the claimant and against the respondents.

x x x x x x

*15. The deceased Sumit Kumar Rao was just about three years old and as such a non-earning child. As to how the compensation is to be assessed in the cases of non-earning children has been dealt with by various High Courts. In **Haji Zainnullah Khan Vs Nagar Mahapalika**, Allahabad reported in 1994 Accidents Claims Journal 993 the Apex Court was in seisin of a case arising out of the death of a 23 years old student of B.Sc. Ist year and a sum of Rs.1.5 lakhs was granted as compensation. Likewise in **K. Murugesu Vs. M. Palappa** 1999 ACJ 961 the Apex Court has held that the fact of deceased being a student and not an earning hand is not a relevant consideration for the purposes of determining compensation. In the reported case the deceased was 18 years old at the time of his death on 4.1.1989 and a compensation of Rs.1 lakh was awarded. In **Manju Devi Vs. Musafir Paswan** 2005 ACJ 99 the Apex Court has assessed notional income for a non earning person at Rs. 15,000/- per year and as the deceased child in the reported judgment was 13 years old, a multiplier of 15 was adopted.*

16. Appraised in totality of circumstances, the age of the deceased child, income of his parents and the strata of society to which they belong, it is held that the applicants



are entitled to lump sum compensation of Rs. 1.5 lakh and issues No.2 and 3 are decided in favour of the claimants and against the respondents, pro-tanto.”

10. The relevant paragraphs of the judgment passed by Hon’ble the Apex Court in ***Kusmi Devi*** (supra) are as under:-

“3. In respect of the death of a three years old child in the accident which occurred on 25.08.1994, the Motors Accidents Claims Tribunal (For short 'MACT') through its Award dated 13.02.2015 had granted the compensation of Rs. 1,50,000/- with interest @ 9% per annum. The High Court through its judgment dated 13.12.2018 has enhanced it to a sum of Rs.5,00,000/- as a global compensation.

4. In a matter of the present nature where the regular parameters of determining the compensation cannot be considered due to the uncertainties in life of a child and as held by this Court, the lump sum compensation is being awarded. Without prejudice to the contentions all the parties and in the interest of justice, we deem it appropriate to grant a further sum of Rs.1,00,000/- as global enhancement which shall be deposited by the respondent No.2-Insurance Company before the MACT concerned within a period of three weeks from the date of receipt of a copy of this judgment, whereupon the amount shall be disbursed to the claimant.”

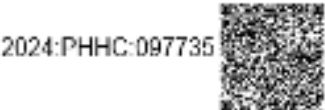
**ANALYSIS OF THE JUDGMENT**

A bare reading of the judgment passed by Hon'ble the Supreme Court in ***Kusmi Devi*** (supra) shows that Hon'ble the High Court in a case of death of 3 years old child, enhanced the compensation granted by the Motor Accident Claims Tribunal to a sum of Rs.5 lakh as a global compensation. AND Hon'ble the Supreme Court further granted a sum of Rs. 1 lakh as a global enhancement. Meaning thereby Hon'ble Supreme Court held that the total global compensation for the death of a three year old child is Rs.6 lakh.

11. In view of the above referred to judgment passed by Hon'ble Supreme Court, the present appeal is allowed. The appellants-claimants are entitled to compensation to the tune of Rs.6 lakh. The award dated 03.11.2006 is modified accordingly.

12. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

13. The Insurance Company is directed to deposit the enhanced amount along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the enhanced amount of compensation along with interest in the accounts of all the claimants in the claim petition No.82 filed in the year 2005 in the same ratio as was granted in the award dated 03.11.2006 i.e. the amount of compensation shall be shared by both the appellants/claimants equally. Appellants/claimants are directed to furnish their bank accounts details to the Tribunal. Further, the Tribunal is



directed to disburse the enhanced amount in their respective accounts as per the ratio settled in the award dated 03.11.2006.

14. Pending applications, if any, also stand disposed off.

(SUDEEPTI SHARMA)
JUDGE

July 25, 2024
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No