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

FAO-4411-2006 (O&M)
Date of Decision: November 27, 2024

Raj Kumar ......Appellant

Vs.

Ram Singh and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Raghav Bali, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate
for the respondent-Insurance Company.

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SUDEEPTI SHARMA J.

1. This is an old matter pertaining to the year 2006 but no one has put in appearance on behalf of the Insurance Company.

2. Previously vide order dated 18.07.2024 in FAO No.1682 of 2007, this Court had already issued directions to the Insurance Companies that in the event, any of their empanelled counsel fails to appear, the Court would request the counsel empanelled with the Insurance Companies, who is present in the Court to assist in the matters. Further, the concerned Insurance Companies were directed to disburse the current scheduled fees to the counsel engaged by this Court for assisting in the matters.

3. On the asking of the Court, Mr. Ravinder Arora, Advocate accepts notice on behalf of the respondent-Insurance Company.

4. Learned counsel for the appellant has handed over copy of the paper-book alongwith relevant record to the learned counsel for respondent- Insurance Company.

5. In view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, the Insurance Company is directed to disburse the current scheduled fees to Mr. Ravinder Arora, Advocate, the counsel engaged by this Court in the present case.

FAO No. 4411-2006

6. The present appeal has been preferred against the award dated 06.06.2006 passed in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') for enhancement of compensation, granted to the claimant to the tune of Rs.1,00,000/- along with interest @ 7.5% per annum, on account of death of Saniya (daughter of the appellant) in a Motor Vehicular Accident, occurred on 11.02.2005.

7. As sole issue for determination in the present appeal is confined to quantum of compensation awarded by the learned Tribunal, a detailed narration of the facts of the case is not reproduced and is skipped herein for the sake of brevity.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

8. The learned counsel for the claimant-appellant contends that the compensation assessed by the learned Tribunal is on the lower side and deserves to be enhanced. He submits that Saniya was only 1 ½ year of age at the time of accident. Learned counsel for the appellant contends that the learned Tribunal has erred in law in awarding lump-sum amount of Rs.1,00,000/-. The learned Tribunal has not awarded any amount under the conventional heads. Therefore, he prays that the present appeal be allowed and compensation should be enhanced, as per latest law.

9. Per contra, learned counsel for respondent No. 3, however, vehemently argues that the award has rightly been passed and the amount of

compensation as assessed by the learned Tribunal has rightly been granted. Therefore, he prays for dismissal of the appeal.

10. I have heard learned counsel for the parties and perused the whole record of this case.

<u>SETTLED LAW ON COMPENSATION</u>

11. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court in a case of **"*Kishan Gopal Vs. Lala and others 2013 AIR SC (Civil) 2465*"** wherein in a case of death of child aged 10 years, Hon'ble the Supreme Court took the notional income of the deceased at Rs.30,000/- and applied the multiplier of 15 and the compensation came to Rs.4.50 lacs, Rs,50,000/- was given towards loss of love and affection, funeral expenses, last rites etc. Hon'ble the Supreme Court while dealing with a case filed under Section 163-A of the Motor Vehicles Act laid criteria for awarding the compensation in a case filed under Section 163-A of the Motor Vehicle Act. Hon'ble the Supreme Court in para 18 of the judgment has held as under:-

> *"18. For this purpose, it would be necessary for us to refer to Second Schedule under Section 163-A of the M.V. Act, at clause No.6 which refers to notional income for compensation to those persons who had no income prior to accident. The relevant portion of clause No.6 states as under:*
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> > *"6. Notional income for compensation to those who had no income prior to accident: .... (a) Non-earning persons – Rs.15,000/- p.a." The aforesaid clause of the Second Schedule to Section 163-A of the M.V. Act, is considered by this Court in the case of* ***Lata Wadhwa & Ors. v. State of Bihar & Ors. 2001 (4) RCR (Civil) 673****, while examining the tortuous liability of the*

tort-feasor has examined the criteria for awarding compensation for death of children in accident between age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs.12,000/- p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs.25,000/- was awarded. Thus, a total sum of Rs.1,57,000/- was awarded in that case. After noting the submission made on behalf of TISCO in the said case that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecusable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs.1.5 lakhs to which under the conventional heads a sum of Rs.50,000/- should be added and thus total amount in each case would be Rs.2 lakhs. Further, in the case referred to supra it has observed that in so far as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the *deceased child was taken Rs.12,000/- p.a. appears to be on the lower side and held that the contribution of such children should be Rs.24,000/- p.a. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years' old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. 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 and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in* ***Kerala SRTC v. Susamma Thomas 1994(2) SCC 176****, 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."*

12. Reference at this stage can further be made to a judgment passed by Hon'ble the Apex Court in Civil Appeal No.3699 of 2023 titled as ***"Kusmi Devi Vs. Md. Kasim and another***".

13. 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. 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.

14. A bare perusal of the above judgment shows that the Tribunal has erred in law in giving the lumpsum amount to the claimant on account of death of a hIS daughter Saniya, who was aged 1 ½ year old. Therefore, the award requires indulgence of this Court.

15. In view of the above referred to judgment passed by Hon'ble Supreme Court, the present appeal is allowed. The award dated 06.06.2006 is modified accordingly. The appellant-claimant is entitled to compensation to the tune of Rs.6 lakh.

16. 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.

17. The Insurance Company-respondent No. 3 is directed to deposit the enhanced amount of compensation 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 account of the appellant . The claimant/appellant is directed to furnish his bank account detail to the Tribunal.

18. Before parting with the judgment, this Court extends its appreciation to Mr. Ravinder Arora, Advocate, for his able assistance to the Court in the present matter..

19. Further Insurance Company is directed to disburse the current schedule fees to Mr. Ravinder Arora, Advocate, within a period of ten days from the date of receipt of certified copy of this order

20. Disposed of accordingly.

21. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

November 27, 2024
G Arora

Whether speaking/non-speaking : Yes
Whether reportable : Yes