In the High Court of Punjab and Haryana at Chandigarh

FAO No.3073 of 2010(O&M)

Date of Pronoucement: 02.08.2024

Hari Om and another .....Appellants

Versus

Mohd. Yusuf Teli and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. S.P. Khatri, Advocate for the appellants.

Mr. Vijay Kumar Garg, Advocate for respondent No.3-Insurance Company.

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RITU TAGORE, J.

1. Poonam, aged 16 years, a student of 10^{th} standard, lost her life in a motor vehicular accident that occurred on 26.11.2008. The accident was caused by respondent No.1/driver while driving the offending vehicle i.e. a truck bearing registration No.JK-03A-5710, in a rash and negligent manner.

2. Grieving parents (claimants) filed the petition under Section 166 of the Motor Vehicles Act, 1988, against the respondents (driver, owner and insurer of the offending vehicle), seeking compensation of Rs.15,00,000/- for the death of their child.

3. Respondents (driver, owner and insurer), on appearance before the Motor Accident Claims Tribunal, Sonipat (hereinafter to be referred as 'Tribunal'), filed their respective pleadings. After appraisal of the evidence,

learned Tribunal granted a sum of Rs.1,62,500/- as compensation along with interest @ 7.5% per annum from the date of filing of petition till its realisation and held all the respondents jointly and severally liable for the payment of determined amount of compensation, to the claimants.

4. Being dissatisfied with the amount of compensation granted in the impugned award, the claimants have preferred the above captioned appeal.

5. Learned counsel for the appellants/claimants submits that assessment of income of the deceased on notional basis is even lower than the minimum wages. The income should have been at least equal to minimum wages prevalent during the relevant period, which were Rs.3,664/- per month for an unskilled person. The deceased was a bright student of 10th standard and used to tutor the children upto 08th standard and her contributions to the family were not less than Rs.3,000/- per month. Learned counsel for the appellants/claimants further states that learned Tribunal should not have assessed the income of the deceased on notional basis. However, in alternate, learned counsel for the claimants by referring to the judgment of a Co-ordinate Bench of this Court in FAO No.2268 of 2016 titled "**Mohan Lal and others Vs. Satyawan and others**", decided on 02.06.2023, contends that in case of assessment of income of the deceased on notional basis, same should be considered as not less than Rs.50,000/- per annum.

6. Further, reduction of income for personal expenses of the deceased by the learned Tribunal, has also been challenged, besides assailing

the grant of compensation under the conventional heads not being in terms of decisions laid down by Hon'ble the Supreme Court in '**Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others' (2018) 18 SCC 130** and '**National Insurance Company Limited vs. Pranay Sethi and others' (2017) 16 SCC 680**, by stating that just and reasonable compensation ought to have been awarded along with interest as permissible.

7. Learned counsel for the claimants, thus, prayed for enhancement of compensation.

8. Per contra, learned counsel for respondent No.3/Insurance Company urged that although the compensation as awarded by the Tribunal is just and proper, yet placing reliance on a judgment in '**Meena Devi Vs. Nunu Chand Mahto and others', (2023) 1 SCC 204**, contends that in a similar case involving the death of a minor child aged 12 years, a student of 5th class, Hon'ble the Supreme Court assessed the notional income at Rs.30,000/- per annum. He further argues that in the present case, there is no evidence on record suggesting that the deceased was taking tuition and was contributing Rs.3,000/- per month to the family. It is urged that the facts of the case in **Mohan Lal and others'** case (supra) are not applicable to the facts of the present case. However, learned counsel acknowledges that compensation under the conventional heads is not in line with the observations made in **Magma General Insurance Company Limited's** case (supra) and **Pranay Sethi and others'** case (supra). However, prayed for a reduction in the rate of interest granted by the learned Tribunal, stating

that it was on the higher side.

9. I have heard learned counsel for the parties and perused the paper-book.

10. The death of Poonam, in the accident in question, caused by respondent No.1/driver, while driving the offending vehicle in a rash and negligent manner is not in dispute. Furthermore, age of the deceased being 16 years, 10th grade student, and the daughter of the claimants, is also not in dispute. The liability of the Insurance Company is also not in issue in the present case. However, the dispute is only with regard to quantum of compensation.

11. The factual findings recorded by the Tribunal, based on evidence that the deceased had no income from alleged tuition work, could not be refuted by learned counsel for the claimants. Consequently, the assessment of the minor daughter's contribution to the family on notional basis for a 'non-earning individual' is justified.

12. It is well settled that compensation should be determined based on factual matrix. However, the potential income of a child, irrespective of age, cannot be precisely determined. Nonetheless, untimely loss of a human life in adolescence can never be adequately measured solely in terms of loss of earnings or monetary loss. In **'Kishan Gopal and another vs. Lala and others ', 2014(1) SCC 244**, a child of 10 years had died in a road side accident in the year 1992. Hon'ble the Supreme Court while deciding the case in 2013, enhanced the notional income from Rs.15,000/- to Rs.30,000/- by observing that value of rupee has declined drastically since 1992.

Moreover, had this unfortunate accident not consumed the life of the minor child, she would have been a source of help and happiness to his parents-appellants. Determination of compensation should not depend upon the financial position of the victim or the claimant rather on the capacity and ability of the deceased to provide happiness in life of the claimants if the child remained alive. The compensation is granted to compensate for loss of prospective happiness which the claimants would have enjoyed had the child not died at such a young age. It is further pertinent to note that the value of rupee has significantly diminished due to substantial increase in the price of essential commodities. Now in the year 2024, there has been all the more depreciation in value of the rupee. In view of the above deliberations, I am inclined to take the income of the deceased adolescent child on notional basis at Rs.50,000/- per annum.

13. However, no case for addition of future prospects on determination of notional income is made out, as the element of increase in future income is inherently accounted for, when considering the notional income of a 'non-earning person'. Similarly, no case is made out for deducting any amount from personal expenses of a 'non-earning person' whose income is assessed on notional basis.

14. However, the grant of compensation on account of loss of filial consortium, loss of estate and funeral charges as granted by the Tribunal is not as per the legal proposition of law expounded by Hon'ble the Supreme Court of India in **Pranay Sethi and others'** case (supra). Accordingly, it is required to be re-determined.

15. In view of the aforesaid discussion, the award passed by the Tribunal is modified and claimants/appellants are held entitled to the amount of compensation as re-determined hereinbelow:-

Sr. No.	**Heads**	**Amount**
1.	Loss of dependency (50,000/- x 15 multiplier)	Rs.7,50,000/-
2.	Loss of consortium (filial) (48,000/- x 2)	Rs.96,000/-
3.	Funeral expenses	Rs.18,000/-
4.	Loss of estate	Rs.18,000/-
5.	Total Compensation	Rs.8,82,000/-
6.	Amount awarded by the Tribunal	Rs.1,62,500/-
7.	**Enhanced amount of compensation**	**Rs.7,19,500/-**

16. The respondent No.3-Insurance company, is hereby directed to pay the claimants-appellants an enhanced amount of compensation i.e. Rs.7,19,500/- (Rupees seven lakh nineteen thousand five hundred only) awarded hereinabove, over and above, the amount awarded by the Tribunal, with interest at the rate of 6% per annum from the date of filing of the claim petition till its realization, and amount assessed above be deposited within a period of two months from the date of receipt of certified copy of this judgment, with the Tribunal. The remaining conditions of disbursal of the amount as given by the Tribunal shall remain unaltered. Needless to mention that the amount, if any, already deposited by the insurance company shall be adjusted.

17. No other point was addressed or raised.

18. The appeal stands allowed in the aforesaid terms. No order as to costs.

19. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

AUGUST 02, 2024 **(RITU TAGORE)**
d.gulati **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No