IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-10475-2014 (O&M)

Fateh Mohammad

...Appellant

VERSUS

Kulwant Singh and others

...Respondents

(ii) FAO-10476-2014 (O&M)

Smt.Sahina and another

...Appellants

VERSUS

Kulwant Singh and others

...Respondents

(iii) FAO-10477-2014 (O&M)

Smt.Sahina

...Appellant

VERSUS

Kulwant Singh and others

...Respondents

Date of Decision: April 09, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Amardeep Rana, Advocate
for the appellants.

Mr.Sanchit Punia, Advocate
for respondents No.1 and 2.

Mr.Sanjeev Goyal, Advocate
for respondent No.3-insurance company.

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ARCHANA PURI, J.

These are three appeals, filed to assail the inadequacy of the compensation awarded by learned Tribunal, vis-a-vis, death of a 7 year old child and injuries sustained by his parents, in a motor vehicular accident, which took place on 10.12.2012.

FAO-10475-2014 relates to the compensation awarded, on account of injuries sustained by Fateh Mohammad.

FAO-10476-2014 relates to the compensation awarded, on account of death of Parvez, who was 7 years old.

FAO-10477-2014 relates to the compensation awarded on account of injuries sustained by Smt.Sahina.

So far as, fact of accident and manner of taking place of the same is concerned, no appeal has been filed by the respondents, to assail the same. Hence, this issue warrants no further scrutiny. Be it noted that it is the appellants-claimants, who have filed the respective appeals, thereby, questioning the quantum of compensation.

Firstly, let us the consider the claim qua death of Parvez, 7 year old child. It it pleaded case that the said child was 7 years old. In the post-mortem report Ex.P1, the deceased child is stated to be 7 years old. Considering the same and also considering the assertion that deceased child was a brilliant and intelligent student, while relying upon the case law of Hon'ble Supreme Court, learned Tribunal had assessed the notional income of the deceased as Rs.15,000/- per annum and also considered the fact of Schedule-II, providing for notional income of the non-earning deceased to be Rs.15,000/-. Further, learned Tribunal applied the multiplier of '15' and worked upon the compensation as Rs.2,25,000/-. Beside the same, another sum of Rs.15,000/- was granted, on account of last rites and transportation expenses. Thus, in total, the compensation granted to the parents of the deceased i.e. Fateh Mohammad and Smt.Sahina was Rs.2,40,000/-.

However, while placing reliance upon the prevalent law, on the subject of compensation qua death of a child, in a motor vehicular accident, the aforesaid computation of compensation, does call for re-determination.

In ***'Kishan Gopal and another v/s Lala and others, 2013(4) RCR (Civil) 276'***, while considering the death of a child, aged 10 years, the Court took the notional income of the deceased as Rs.30,000/- and applied multiplier of **'15'** and compensation came to be Rs.4.5 lakh. Rs.50,000/- was given towards love, affection, funeral expenses and last rites. The accident in the case under consideration, related to the year 1992.

Even, Hon'ble Supreme Court in case titled ***"Kurvan Ansari alias Kurvan Ali and another v/s Shyam Kishore Murmu and another, 2022 (1) RCR (Civil) 165"***, while considering the case of death of 7 years old child, in a motor vehicular accident, which took place in the year 2004, had made certain observations, with regard to the government not taking any steps to amend the Schedule, in view of Section 163-A(3) of the Motor Vehicle Act and further, considering the same and also taking into consideration, the fact of inflation, devaluation of rupee and cost of living, made observations, as herein given:-

> *"11. As the claim was made under Section 163-A of the Motor Vehicles Act 1988, since the deceased child was not an earning member, the Tribunal has considered notional income as per Schedule–II for the purpose of fixing compensation. The Tribunal has awarded compensation by taking notional income of the deceased at Rs.15,000/- per annum by applying multiplier '15', awarded compensation of Rs.2,25,000/- towards loss of dependency with interest @ 6% per annum from the date (2009) 14 SCC 1 (2014) 1 SCC 244 (2020) 7 SCC*

256 of judgment. When the appeals are preferred by the Insurance Company as well as the appellants herein, by the impugned common judgment, the High Court has dismissed the appeal preferred by the Insurance Company, and in the appeal preferred by the claimants, while confirming the compensation awarded for loss of dependency at Rs.2,25,000/-, has awarded a further sum of Rs.15,000/- towards funeral expenses and accordingly granted a total compensation of Rs.2,40,000/- with interest @6% per annum payable by respondent No.2 - Insurance Company and by permitting it to recover the same from Respondent No.1 - owner of the motorcycle.

12. In the judgment in the case of Puttamma & Ors., this Court has observed that the Central Government was bestowed with the duties to amend Schedule-II in view of Section 163A(3) of the Motor Vehicles Act 1988, but it failed to do so. In view of the same, specific directions were issued to the Central Government to make appropriate amendments to Schedule-II keeping in mind the present cost of living. In the said judgment, till such amendments are made, directions were issued for award of compensation by fixing a sum of Rs.1,00,000/- (Rupees one lakh only) towards compensation for the non-earning children up to the age of 5 (five) years old and a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) for the non- earning persons of more than 5 (five) years old.

13. In the case of R.K. Malik & Anr. also, this Court has observed that the notional income fixed under Section 163-A of the Motor Vehicles Act, 1988 as Rs.15,000/- per annum should be enhanced and increased as the same continued to exist without any amendment since 14.11.1994. In the case of Kishan Gopal & Anr. where the deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.

14. In this case, it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non- earning members is not just and reasonable.

15. In view of the judgments in the cases in Puttamma & Ors., R.K. Malik & Anr. and Kishan Gopal & Anr., we are of the view that it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. In view of the same, the judgment in the case of Rajendra Singh & Ors. relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company."

In the light of the same, the Hon'ble Court took the notional income of the deceased child as Rs.25,000/- per annum and applied multiplier of '15' as prescribed in Schedule-II and worked upon the amount as Rs.3.75 lakh, towards the loss of dependency. Besides the same, Rs.40,000/- each was given to the claimants, who were two in number, towards filial consortium and Rs.15,000/- was given towards funeral expenses. The total compensation was worked upon as Rs.4,70,000/-.

In ***'Meena Devi v/s Nunu Chand Mahto @ Nemchand Mahto and others, 2022(4) RCR (Civil) 553'***, while relying upon the observations made in ***R.K. Malik's case (supra)*** and ***Krishan Gopal's case (supra)***, and also taking into consideration, the guidelines laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the Hon'ble Supreme Court, while considering the death of 12 year old, in a motor vehicular accident, took the notional earnings as Rs.30,000/- including future prospects and applied the multiplier of **'15'**. The loss of dependency was worked upon to be Rs.4,50,000/- and further addition of Rs.50,000/- was made under conventional heads and thus, the total compensation was worked upon as Rs.5,00,000/-.

Be it noted that the accident under the aforesaid case law, had taken place, long time back and the notional income was assessed as Rs.25,000/- and Rs.30,000/-, per annum.

However, in the case in hand, the accident had taken place on 10.12.2012. Also, the assessment of the notional income has to be made, considering the devalue of rupee since then and also looking at the deceased child, to be belonging to a privileged class, as his father is well placed in life and he is a doctor, who had also sustained injuries in the accident in question. Keeping in view the same, the prospects of future growth of the child, were relatively better. Considering the same, the notional earnings of deceased child, can conveniently be considered as Rs.35,000/- per annum. The multiplier to be applied in the case, in hand, is '**15**' and so calculating, the loss of dependency comes to be Rs.5,25,000/-.

Besides the aforesaid, under the conventional heads, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the compensation ought to be paid, on the count of 'loss of consortium', 'loss of estate' and 'funeral expenses'. 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.

In view of the same, appellants-claimants are entitled to compensation, on the aforesaid counts. As per ***Pranay Sethi's case (supra)***, the compensation payable, at present, on the count of 'loss of consortium' is to the extent of **Rs.48,400/-**, to each of the claimants and on the similar pattern, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be **Rs.18,150/-,** on each count.

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

Loss of dependency	**:**	**Rs.5,25,000/-**
Loss of consortium	**:**	**Rs.96,800/-**
Loss of estate	**:**	**Rs.18,150/-**
Funeral expenses	**:**	**Rs.18,150/-**

Total : Rs.6,58,100/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.6,58,100-2,45,000=Rs.4,13,100/-**.

Now, let us consider the claim of injuries sustained by Fateh Mohammad, in the accident in question. On appraisal of the evidence brought on record, learned Tribunal had appropriately considered the fact of injured Fateh Mohammad, soon after the accident, having shifted to CHC Nuh, where from, he was shifted to Sai Hospital and Trauma Centre, Badshahpur, where he remained under treatment. Fateh Mohammad himself stepped into witness box as PW-1 and in his affidavit Ex.PW1/A, he categorically deposed about having received multiple and grievous injuries, on vital parts of the body and further, he also deposed about having remained admitted in hospitals.

Also, PW-3 Dr.Sanjay Phogat, Medical Officer, CHC Nuh, had proved the MLR of injured Fateh Mohammad, which is Ex.P2. The discharge summary of Sai Hospital and Trauma Centre, where, Fateh Mohammad remained admitted is Ex.P25. It reveals about Fateh Mohammad to have suffered multiple injuries and also had fracture of Tibia. It also depicts about Tibia interlocking having been done.

Injured Fateh Mohammad was also extended treatment from Geetanjali Hospital for implant screw removal and the prescription of the process conducted in the hospital is Ex.P26 and the bill relating to the same is Ex.P27.

Furthermore, various other bills, regarding the treatment have also been proved as Ex.P8 to P17, Ex.P23, Ex.P27 as well as Ex.P28, the total whereof is Rs.1,77,180/-. The disability certificate of appellant-claimant Fateh Mohammad had been tendered as Ex.P30.

While taking into consideration, the aforesaid evidence, brought on record, the compensation awarded by learned Tribunal to Fateh Mohammad, is reproduced in tabular form, as herein given:-

Sr. No.	Pecuniary Damages	(in Rupees)
1.	Medical expenses as per Bills & Receipts	1,77,180/-
2.	Transportation charges (approx.)	5,000/-
3.	Attendant charges	Nil
4.	Diet and Nutrition	5,000/-
5.	Loss of income	Nil
	Non-pecuniary damages	
6.	Pain and suffering	20,000/-
7.	Loss of amenities of life	Nil
	Loss of prospects of marriage	
	Total	Rs.2,07,180/- (rounded off as Rs.2,07,200/-)

Thus, the compensation awarded was Rs.2,07,200. Definitely, the compensation aforesaid, calls for re-determination.

Learned counsel for the insurance company has submitted that compensation awarded is just and reasonable, which calls for no further enhancement. In this regard, learned counsel for the insurance company has assiduously submitted that the disability certificate Ex.P30, as such, cannot be taken into consideration, as it has been simply tendered into evidence. No doctor, who had examined Fateh Mohammad, has been examined, during the course of evidence and in these circumstances, the same ought not to be taken into consideration.

Very true Ex.P30 is the disability certificate, which has been tendered into evidence. It states about the partial restriction of left knee movement and disability and on this account, the disability was assessed to be 7%, which is permanent.

No doubt Ex.P30 has simply been tendered into evidence and no doctor, as such, has been examined, but however, from the perusal of the record, it is evident that during the course of evidence, an application was filed at the instance of claimant Fateh Mohammad, to examine the witnesses. One of the witness, intended to be examined was Dr.Arvind Jindal, Ortho Surgeon, Government Hospital, Gurgaon. He was ought to be summoned along with the record of disability certificate CS No.60 dated 06.11.2013, issued to Fateh Mohammad. It also shows that diet money was also ordered by the Tribunal to be deposited and the needful was done and thereupon, various times, summons were also sent by the Tribunal, for summoning of the said witness along with the record. The copies of the summons and the reports made thereupon, are part of the record of the Tribunal, but however, learned Tribunal has not ensured about the summoning of the said witness and if not so, being examined, had not initiated any steps to ensure the presence of the witness as well as production of the record.

Perusal of the zimini order reveals that it was further abruptly ordered by learned Tribunal to produce the witnesses at own responsibility and thereupon, on 21.12.2014, learned counsel had tendered into evidence, the various documents, which are Ex.P26 to Ex.P30, which also included disability certificate and closed the evidence.

Very true, as now pointed out that the disability certificate has not been proved by way of examination of the witness. Things would have worked differently, if the doctor, who had extended treatment was examined, but he has not been examined. The actual facts would have come to the fore, only when the evidence of the relevant doctor would have been recorded and he would have been cross-examined, but it is not so. However, at this stage, it shall not be appropriate for this Court to remand the case back to Tribunal, as the parties will be forced to go into another round of litigation and it would frustrate the intent of the beneficial legislation. But any how, the assessment of the disability is 7%, which relates to the restrictive movement of the left knee. However, this kind of restriction is also evident from the discharge summary, which has come on record. It states about the claimant Fateh Mohammad to have suffered the fracture of Tibia and multiple injuries and Tibia interlocking was done. Thereafter, even Fateh Mohammad also remained admitted in the hospital for surgery for implant screw removal. The bill relating to the same has also been proved as Ex.P27.

Considering the same, definitely, it shows about the kind of injuries, so sustained, which is bound to cause some loss of efficiency. Keeping in view the aforesaid fact situation, the whole body injury is taken as 4%.

From the recitals of the various qualification certificates, coming on record, it stands established that date of birth of Fateh Mohammad is 03.10.1973. At the time of accident, he was 39 years old. He was working as Doctor and considering the same, no clear and specific evidence, with regard to his earnings, as such, is coming forth. Considering the profession followed by him, in modest estimate, his earnings are taken to be Rs.10,000/- per month. Considering the same, on the count of disability, the loss is assessed as Rs.10000x4%=Rs.400/- per month, the annual whereof, comes to be Rs.4,800/-. Considering the age of the claimant, by application of multiplier of '15', as per ***Sarla Verma's case (supra)***, the loss is assessed as Rs.4800x15=**Rs.72,000/-**.

However, the medical expenses, as per the bills and receipts, proved in evidence, has been appropriately considered as Rs.1,77,180/-. However, on the count of 'transportation charges' and 'diet and nutrition', wherein, a sum of Rs.5,000/- each was given by learned Tribunal. Looking the kind of injuries sustained by the claimant, in the accident in question, the same stands enhanced to **Rs.10,000/-** on each count. When, on account of fracture of Tibia, the appellant-claimant had undergone Tibia interlocking process and even the screw was removed, definitely, he ought to be looked after by an attendant, for some period of time. Thus, on the count of 'attendant charges' a sum of **Rs.10,000/-** is granted. For this period, during which appellant-claimant Fateh Mohammad had undergone treatment, he must not have been able to discharge his professional duties, for some period of time and on this count, another sum of **Rs.10,000/-** is granted.

Likewise, on the count of 'pain and suffering' also, the compensation granted by learned Tribunal also calls for further enhancement and the same stands enhanced to **Rs.40,000/-**.

Thus, on various counts, as detailed aforesaid, the compensation to be granted to claimant Fateh Mohammad, is re-computed as herein given:-

1.	**Loss on account of disability**	**Rs.72,000/-**
2.	**Medical Bills**	**Rs.1,77,180/-**
3.	**Transportation charges**	**Rs.10,000/-**

4.	**Diet and nutrition**	**Rs.10,000/-**
5.	**Attendant charges**	**Rs.10,000/-**
6.	**Loss of earnings for some period of time**	**Rs.10,000/-**
7.	**Pain and suffering**	**Rs.40,000/-**
	Total	**Rs.3,29,180/- (rounded off as Rs.3,29,200/-)**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.3,29,200-2,07,180=Rs.1,22,020/-**.

Now, let us consider the claim of appellant-claimant Sahina, who had also sustained injuries in the accident in question. Sahina had herself stepped into witness box as PW-1 and tendered into evidence her affidavit Ex.PW1/A. She has deposed about having sustained multiple injuries, on account of accident in question. Various bills, relating to the expenditure incurred on her treatment are Ex.P18 to Ex.P22, Ex.P24 and Ex.P29, the total whereof is Rs.38,038/-. While considering the same, the compensation, worked upon by learned Tribunal, in tabular form, is reproduced as herein given:-

Sr. No.	**Pecuniary Damages**	**(in Rupees)**
1.	Medical expenses as per Bills & Receipts	38,038/-
2.	Transportation charges (approx.)	3,000/-
3.	Attendant charges	Nil
4.	Diet and Nutrition	3,000/-
5.	Loss of income	Nil
	Non-pecuniary damages	
6.	Pain and suffering	10,000/-
7.	Loss of amenities of life	Nil
	Loss of prospects of marriage	
	Total	Rs.54,038/- (rounded off as Rs.54,000/-)

However, the compensation, so worked upon, does call for further re-determination.

At the very outset, it is pertinent to mention that in the accident in question, besides claimant Sahina herself sustaining injuries, even her husband Fateh Mohammad had sustained injuries and her son, who was 7 years old, had died. She also deposed about herself to be indulging in tailoring work. Though, no clear and specific evidence has come on record, about the indulgence of claimant Sahina in tailoring work, but anyhow, she is to considered as homemaker. The value of services rendered by the homemaker, ought to be taken into consideration. In modest estimate, the value of her services, can conveniently be taken as **Rs.3000/-** per month. Looking at the injuries sustained in the accident in question and also keeping in view the fact of her son having died in the accident and her husband also having sustained injuries, which have been already discussed in the earlier portion of the judgment, claimant Sahina, ought not to have been in a position to look after her house as well as her husband. In the given circumstances, she must have engaged some help, for running of her household. In the given circumstances, the loss rendered on the count of engagement of services of other person for a period of four months, can conveniently be worked upon as Rs.3000x12=**Rs.12,000/-**.

She had spent **Rs.38,038/-** on medical expenses, as per bills and receipts. On the count of 'diet and nutrition' as well as 'transportation', the amount granted by learned Tribunal is on lower side and the same stands enhanced to **Rs.5,000/-** on each count. Even, on the count of 'pain and suffering', the compensation stands enhanced to **Rs.20,000/-**.

Thus, on various counts, as detailed aforesaid, the compensation to be granted to claimant Sahina, is re-computed as herein given:-

1.	**Value of services**	**Rs.12,000/-**
2.	**Medical Bills**	**Rs.38,038/-**
3.	**Transportation charges**	**Rs.5,000/-**
4.	**Diet and nutrition**	**Rs.5,000/-**
5.	**Pain and suffering**	**Rs.20,000/-**
	Total	**Rs.80,038/- (rounded off as Rs.80,000/-)**

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.80000-54000=Rs.26,000/-**.

At this juncture, it is pertinent to mention that learned Tribunal, while affixing the liability, upon the respondents, had also made an observation that truck in question was not having permit. In the given circumstances, though, respondents No.1 and 2 were held to be, jointly and severally, liable to pay the compensation and the insurance company was absolved from the liability but, it was observed that insurance company, shall pay at first instance and effect recovery from the owner.

Considering the aforesaid, now learned counsel for respondents No.1 and 2 has submitted that no such objection had been taken by the insurance company, with regard to the permit, in the reply. But however, it is not so. A specific objection had been taken by the insurance company about the truck bearing registration No.HR-39B-0676, to be not having valid and effective route permit.

Considering the same, it was required on the part of respondents No.1 and 2 i.e. driver and owner of the truck, to have produced the permit. But however, the permit was never produced in evidence. In fact, no evidence was produced at the behest of respondents and their evidence was closed by order, as observed by learned Tribunal. Thus, considering the same, learned Tribunal had correctly fastened the liability upon respondents No.1 and 2 and recovery rights having granted to the insurance company. Moreover, the person aggrieved, had never filed any appeal to challenge the recovery rights granted to the insurance company. Hence, the submission, so made, is bereft of merits.

On the enhanced amount of the compensation as observed aforesaid, on account of death of Parvez and injuries sustained by Fateh Mohammad and Sahina, the appellants-claimants, shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. Further, the enhanced compensation, on account of death of Parvez, as now awarded, be disbursed to the appellants-claimants, in equal proportions. The remaining terms of the Award, shall remain the same.

With the above observations, all the three appeals stand allowed.

The pending civil misc. applications, if any, stand disposed of.

April 09, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**