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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1670-2014 (O&M)

Date of Decision : 27.08.2024

Partima Devi and Anr. ... Appellant(s)
Versus

Devinder Singh and Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.S. Sandhu, Advocate and
Mr. P.S. Swaich, Advocate for the appellants.

Respondent No.1 is proceeded against ex parte
vide order dated 09.04.2015.

None for respondent No.2.

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the claimant-appellants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as the 'Tribunal') vide award dated 12.02.2013 on account of death of Rahul Kumar, a 16 years' old child (hereinafter referred to as 'the deceased'), in a motor vehicle accident.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

3. In the present case, the Tribunal has awarded an amount of Rs.2,25,000/- alongwith interest @ 8% per annum after imposing a cut to the extent of 25% towards contributory negligence i.e. Rs.75,000/.

4. Learned counsel for the claimant-appellants would contend that the accident in the present case took place on 14.11.2011 and the deceased at that point of time was 16 years of age and was studying in 8th Class. The learned counsel for the claimant-appellants would further contend that the Tribunal has awarded only a consolidated amount of Rs.2,25,000/-. The learned counsel for the claimant-appellants has relied upon the judgment of the Hon'ble Supreme Court in case of **Krishan Gopal & Anr. vs. Lala & Ors. [2013(4) RCR (Civil) 276]** to contend that in the said case the accident took place in the year 1992 and the notional income of a 10 years' old child was assessed as Rs.30,000/- per annum and hence the notional income of the deceased ought to have been assessed in the present case as also a multiplier method ought to have been applied. It is further the contention of the learned counsel that no amount has been awarded under the head loss of consortium as well as under the conventional heads. In support of his contentions, the learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the cases of **National Insurance Co. Ltd. vs. Pranay Sethi and Ors. [2017 (16) SCC 680]**; **Reshma Kumari & Ors. vs. Madan Mohan & Anr. [2013 (9) SCC 65]**; and **Magma General Insurance Co. Ltd vs. Nanu Ram alias Chuhru Ram & Ors. [2018 (4) RCR (Civil) 333]**. The learned counsel for the claimant-appellants would further contend that the Tribunal has wrongly determined the contributory negligence of the deceased and has erroneously imposed a cut of 25% from the compensation.

5. *Per contra*, the learned counsel for respondent No.3-Insurance Company has contended that it was the duty of the deceased to see both the sides of the road while crossing the same. The deceased was crossing the

road at the time of accident and as such the Tribunal has rightly determined the contributory negligence of the deceased to the extent of 25%. It is further the contention of the learned counsel that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

6. I have heard the learned counsel for the parties.

7. In the present case the accident took place on 14.11.2011 and the deceased at that point of time was 16 years of age and was studying in 8th Class. The Hon'ble Supreme Court in the case of **Krishan Gopal** (supra) had assessed the notional income of a 10 years' old child, who died in a motor vehicle accident in 1992, as Rs.30,000/- per annum and applied multiplicand of 15 according to the age of mother of the deceased. In the present case the accident took place in the year 2011 and in view thereof, this Court deems it appropriate to assess the notional income of the deceased as Rs.50,000/- per annum and apply a multiplier of 18 keeping in view the age of the deceased. However, no future prospects are to be added in the present case as per the judgment in the case of **Kishan Gopal** (supra). Further, as per the judgments of the Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra), the claimant-appellants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and the claimant-appellants would also be entitled to Rs.48,000/- (Rs.40,000+20% increase) towards loss of consortium.

8. So far as the finding of the Tribunal as regards contributory negligence is concerned, this Court is of the view that in a case where an accident takes place involving a pedestrian, it will be usually wrong to apply a principle of contributory negligence. No pedestrian walks on the road to get killed. In the present case, respondent No.1-driver did not enter into the witness box to prove that the accident did not occur due to his rash and negligent driving of the offending vehicle. Respondent No.3-Insurance Company also did not lead any evidence to prove that the deceased as a pedestrian contributed to the cause of the accident. The driver of the motor vehicle is always expected to apply greater caution and thus in the facts and circumstances of the present case, the finding of the Tribunal as regards contributory negligence of the deceased is not sustainable and is set aside.

9. In view of the above, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Annual income	Rs.50,000/-
2	Multiplier of 18	[Rs.50,000 x 18] = Rs.9,00,000/-
3	Loss of estate	Rs.18,000/-
4	Funeral expenses	Rs.18,000/-
5	Loss of Consortium : (i) Filial	Rs.96,000/- (Rs.48,000x2)
	Total Compensation	Rs.10,32,000/-

10. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 8% per annum from the date of filing of the claim petition till the realization of the entire amount.

11. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

27.08.2024

Yogesh Sharma

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking

Whether reportable: YES/NO