IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2707-2015 (O&M)
Date of Decision: January 25, 2024

Kuljit Singh

...Appellant

VERSUS

Harpreet Kaur and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Arora, Advocate
for the appellant.

Mr.Sushil Saini, Advocate
for respondents No.1 and 2.

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ARCHANA PURI, J.

The present appeal has been filed by Kuljit Singh-appellant, owner of the offending vehicle bearing registration No.PB-11J-8160, to assail the Award dated 21.02.2015, passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Harmanjit Singh, in a motor vehicular accident, which took place on 30.10.2013.

The essential facts, to be noticed, are as follows:-

That, initially, Harpreet Kaur and Mehal Singh (respondents No.1 and 2 herein) had filed a claim petition under Section 163-A of the Motor Vehicle Act, for grant of compensation, on account of death of their son

Harmanjit Singh, aged 15 years, who was student of 9th class, in a motor vehicular accident.

On appraisal of the evidence brought on record, vide impugned Award, learned Tribunal had granted compensation to the extent of Rs.5,00,000/- with interest clause and both the claimants were held entitled to the awarded amount, in equal shares.

Being dissatisfied with the awarded amount, the appellant-owner of the offending vehicle has filed the present appeal for seeking reduction of the awarded amount.

In pursuance of notice issued, respondents-claimants made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the appellant-owner that the claim petition for seeking compensation had been filed under Section 163-A of the Motor Vehicle Act, which is a special provision, as to payment of compensation on structured formula basis. Therefore, learned Tribunal ought to have provided compensation, as per Schedule-II. It is submitted that since deceased Harmanjeet Singh was 15 years old, at the time of accident, therefore, his income could only be taken as Rs.15,000/- per month, being a student and after deduction 1/3rd, the appropriate multiplier of '15' was to be applied and the respondents-claimants were to be held entitled only for compensation to the extent of Rs.1,50,000/- and therefore, the amount of compensation, be reduced from Rs.5,00,000/- to Rs.1,50,000/-. Apart from this, it is also submitted that under the conventional heads, an amount of Rs.50,000/- has been given, which ought to be Rs.4500/-, as per Schedule envisaged in the Motor Vehicle Act. As such, a prayer has been made for reduction of the compensation, so awarded by learned Tribunal.

From the evidence brought on record, it stands established that Harmanjeet Singh was 15 years old and was student of 9th class. The fact of accident stands amply established and it is only the extent of compensation, which is being assailed by the appellant-owner.

Perusal of the impugned Award reveals that while relying upon the judgment delivered by the Hon'ble Supreme Court in ***Kishan Gopal and another vs. Lala and others, 2013(4) RCR (Civil) 276***, learned Tribunal had assessed the notional income of Harmanjeet Singh, since deceased, who was 15 years old, as Rs.30,000/- per month and also applied multiplier of '15' and besides the same, had granted Rs.50,000/- under the conventional heads and as such, in total, Rs.5,00,000/- was granted.

In ***Kishan Gopal's case (supra)***, while considering the death of a child, aged 10 years, the notional income, as such, was taken as Rs.30,000/- and multiplier of **'15'** was applied and compensation came to be Rs.4.5 lakh. Furthermore, Rs.50,000/- was given towards love, affection, funeral expenses and last rites. The accident in that case, related to the year 1992.

Useful reference is hereby also made to the decision rendered by the Hon'ble Supreme Court in ***"Kurvan Ansari alias Kurvan Ali and another v/s Shyam Kishore Murmu and another, Civil Appeal No.6902 of 2021 decided on 16.11.2021"*** , wherein, while considering the death of 7 years old child, in a motor vehicular accident, which took place in the year 2004, certain observations, which are germane to the appeal in hand were made:-

> *"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 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.*
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> *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 163-A(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 nonearning persons of more than 5 (five) years old.*
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> *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.3 where the deceased was a ten years old child, this Court has fixed his notional income at Rs.30,000/- per annum.*
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> *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 nonearning 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 view of the aforesaid observations, 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, for the claims under Section 163A of the Motor Vehicles Act, 1988 and further 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/-.

Furthermore, reference is made to decision rendered in ***'Meena Devi v/s Nunu Chand Mahto @ Nemchand Mahto and others, 2022(4) RCR (Civil) 553'***, wherein, the Hon'ble Supreme Court had considered the case of death of 12 years old child, in a motor vehicular accident and while granting compensation, had observed that the principle laid down in case of ***Kishan Gopal's case (supra)***, are aptly applicable to the facts of the case (in hand), and thus, took the notional earnings as Rs.30,000/-, including future prospects and applied the multiplier of **'15'** and the loss of dependency was worked upon to be Rs.4,50,000/- and addition of Rs.50,000/- was made under the conventional heads and thus, the total compensation was worked upon as Rs.5,00,000/-

Considering the aforesaid decisions and more particularly, keeping in view the fact that in spite of repeated directions, Schedule-II having not been amended, the Hon'ble Apex Court had observed that fixing of notional income @ Rs.15,000/- per annum, for non-earning member, is not just and reasonable and therefore, had taken the notional income beyond the income provided under the Schedule.

In the light of the same, when the compensation has been worked upon by learned Tribunal, in consonance with aforesaid case law, the same calls for no reduction, as prayed for.

Hence, the appeal sans merit and the same is hereby dismissed.

January 25, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

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