



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) XOBJC-124-CII-2018 in
FAO-4816-2010

United India Insurance Co. Ltd.
...Appellant

VERSUS

Pooja and others
...Respondents

(ii) XOBJC-127-CII-2018 and
CM-13097-CII-2018 in
FAO-4817-2010

United India Insurance Co. Ltd.
...Appellant

VERSUS

Meena Devi and others
...Respondents

Date of Decision: July 25, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.R.Yadav, Ms.Pratibha Yadav and
Mr.Jayan Yadav, Advocates
for the cross-objectors.

Mr.R.C.Kapoor, Advocate
for the insurance company.

ARCHANA PURI, J.

CM-13097-CII-2018

The present application has been filed for placing on record the

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photocopy of the impugned Award.

In view of the averments made in the application, the same is allowed and the impugned Award is taken on record.

Cross-objections

Two appeals, bearing No.FAO-4186-2010 and FAO-4187-2010 were filed by the insurance company, thereby, assailing the liability fastened upon it, to pay the compensation, awarded on account of death of Priti and injuries sustained by Pooja, in the accident, which took place on 10.11.2006. However, cross-objections were filed in both the appeals, at the instance of the claimants, thereby, seeking enhancement of the compensation awarded to them. Anyhow, both the aforesaid appeals were dismissed by this Court vide judgment dated 26.07.2019. However, for the decision on the cross-objections, the case was adjourned further.

It is in this backdrop, now the cross-objections are to be decided

The accident, in the present case, had taken place on 10.11.2006, whereby, Priti, aged 13 years, who was student of 7th class, had died and Pooja, aged 14 years, student of 8th class, had sustained injuries. In the claim petition bearing MACT-15-2006/10, relating to death of Priti, compensation was awarded to the parents, to the extent of Rs.1,57,510/-. In MACT-16-2006/10, injured-Pooja was granted compensation to the extent of Rs.25,000/- and the liability was fastened upon the driver-cum-owner and insurer of the offending vehicle.

The insurance company had filed two appeals, thereby, questioning the liability fastened upon it and the same, as already stated aforesaid, were dismissed by this Court.

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Being dissatisfied with the extent of compensation, the cross-objectors-claimants have filed the cross-objections in the aforesaid two appeals. XOBJC-124-CII-2018 in FAO-4816-2010 has been filed by claimant-respondent No.1-Pooja, thereby, seeking enhancement of the compensation, granted by learned Tribunal vide Award dated 23.04.2010, on account of injuries sustained by her, in the accident, whereas, XOBJC-127-CII-2018 has been filed by respondents-claimants, for seeking enhancement of the compensation, granted vide same Award, qua death of their daughter Priti, in alleged accident.

Firstly, let us consider the extent of compensation awarded qua death of Priti.

As per version of the claimants, deceased Priti was 13 years old and was student of 7th class. Even, PW-1 Rajpal, father of the deceased, has categorically deposed about relationship with the deceased as well as the age of the deceased and status of her, being student of 7th class. Further, he deposed about deceased, being admitted to Dr.Birender Hospital, Rewari, where she died on 12.11.2006. Medical bills Mark 'A', 'B' and 'E', totalling to Rs.7510 were produced. Besides the same, post-mortem report has also been proved as Ex.PB. Considering the aforesaid, learned Tribunal had assessed the notional earnings of the deceased as Rs.15,000/- per annum and applied the multiplier of '10' and worked upon the compensation as Rs.1,50,000/-. While making addition on the count of 'medical expenditure', which was to the extent of Rs.7510/-, the total compensation was worked upon as Rs.1,57,510/-, along with interest component.

Considering the aforesaid work on the compensation, the extent



of compensation calls for re-determination, as per prevalent settled law.

In this regard, before proceeding further, beneficial reference is made to '*State of Haryana and another vs. Jasbir Kaur and others, 2003(4) RCR (Civil) 140*', wherein, it was held as herein given:-

*"It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense **"damages"** which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary, if it is not so it cannot be just. (See *Helen C. Rebello v. Maharashtra SRTC, 1998(4) RCR (Civil) 177 (SC): 1991(1) SCC 90*)."*

The determination of damages for loss of human life, is extremely difficult task and it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn, the question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases, involves a good



deal of guesswork.

In *Lata Wadhwa and others vs. State of Bihar and others*, **2001(4) RCR (Civil) 673 (SC)**, the Hon'ble Supreme Court, held that while computing compensation, distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years, can be made. Further, it was observed that the compensation determined for the children, for all age group, could be doubled, of what is stated in Schedule II of the Motor Vehicle Act, as the determination was made grossly inadequate and the loss of children is irrecoupable and no amount of money could compensate the parents. The principles laid down in aforesaid case, was made applicable to the facts in the case of *Krishan Gopal's case (supra)* and it was thus considered as 'just and reasonable' to take notional income of Rs.30,000/- and by applying the multiplier as laid down in *Smt.Sarla Verma vs. Delhi Transport Corporation and anr.*, **2009(3) RCR (Civil) 77**, it was observed, as herein given:-

*"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 v. Delhi Transport Corporation**, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in **Kerala SRTS v. Susamma Thomas**, 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."*

In *'Kurvan Ansari alias Kurvan Ali and another v/s Shyam*



Kishore Murmu and another, 2022 (1) SCC 317, the Hon'ble Supreme Court was of the view that it was necessary to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living and the notional income of a child aged about 10 years was considered as Rs.10,000/-.

Before advertng to the case in hand, it is pertinent to mention that in *Krishan Gopal's case (supra)*, the accident had taken place on 19.07.1992. In *Meena Devi's case (supra)*, the Hon'ble Supreme Court had considered the case of death of a 12 year child, in a motor vehicular accident and while granting compensation, had observed that the principles 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' (in view of the decision of the Hon'ble Apex Court *Sarla Verma's case (supra)* 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. The total compensation was worked upon as Rs.5,00,000/-.

However, it should be noted that in *Meena Devi's case (supra)*, the date of accident was 29.07.2003.

In the backdrop of the aforesaid case law, now, advertng the case in hand. It is pertinent to mention that Priti (deceased) daughter of the claimants was 13 years old, at the time of accident and was student of 7th class. Taking into account the inflation, devaluation of rupee and high cost of living, in the fitness of the circumstances, as observed in the aforesaid case law, the notional income of the deceased Priti, can conveniently be



considered as Rs.30,000/- per annum and by applying the multiplier of ‘15’, the loss of dependency comes to be Rs.30000x15=**Rs.4,50,000/-**.

As per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', the dependents of the deceased/claimants, are entitled to ‘parental’, ‘spousal’ or ‘filial’ consortium, as required. Thus, the parents the deceased, are entitled to ‘filial’ consortium, on the count of ‘loss of consortium’.

As per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the count of ‘loss of consortium’, works out to be, Rs.48,400/- to each of the claimants i.e. Rs.48400x2=**Rs.96,800/-** 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 claimants, on account of death of Priti, is re-computed, as herein given:-

Loss of dependency	:	Rs.4,50,000/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.5,83,100/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.5,83,100-1,57,510=Rs.4,25,590/-**. On the enhanced amount of the compensation i.e. **Rs.4,25,590/-**, the claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the cross-objections, till realization of

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the enhanced amount of compensation.

Now, let us consider the compensation awarded by learned Tribunal, on account of injuries sustained by claimant-Pooja, in the accident in question. It is categorical claim of the claimant/injured-Pooja that she was 14 years and student of 8th class, at the time of accident. She had witnessed the accident, as she was riding the ill-fated the cycle, at the relevant time. Said Pooja has stepped into witness box as PW-2 and she has categorically deposed about the manner of taking place of the accident and further deposed about herself and Priti, to have suffered injuries. They were taken to Dr.Birender Hospital, Rewari. Her sister had died on 12.11.2006 and she was discharged on 12.11.2006. Further, also she deposed that she continued to take treatment for 2-3 months. A sum of Rs.25,000/- was spent on her treatment.

Learned Tribunal, while considering the bills Mark 'C' of the expenditure incurred on treatment of Pooja, which was to the extent of Rs.1430/- and also document Mark 'F', observed that Pooja had suffered two fractures. She remained admitted in the hospital, on account of injuries sustained by her and also further considering some amount having spent on transportation, special diet etc., a lumpsum amount of Rs.25,000/- was granted by learned Tribunal, besides the interest component.

Very true, as now pointed by learned counsel for the cross-objector/claimant that the Motor Vehicles Act is a benevolent piece of evidence. It is summary proceedings and strict rules of evidence, as such, do not apply. The treatment record of Pooja, coming on record, reveals that there was Fracture lateral end clavicle (Rt) and Fracture lower end radius

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(Rt). It is quite obvious for a child of the age of Pooja, to have remained under trauma, on account of the injuries sustained in the accident, more particularly, when her sister had also died in the same accident.

Considering the nature of injuries, as spelt out from the medical record, obviously, she must have remained under treatment, though, not much, record relating to her admission in the hospital is coming forth, but considering the record, whatsoever, coming forth, which speaks of fractures having sustained by injured-Pooja and in view of the contents of Mark 'F', she must have remained under observation for some period of time. Also, during this period of her treatment, some amount must have been spent on transportation and she must be taking special diet for the healing process and must have been looked after by an attendant. Though, learned counsel for the insurance company has submitted that no material is produced by the claimants qua actual expenses incurred upon the services of attendant and it is also argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of injuries suffered, the injured ought to be having one attendant to look after her, as there was need for assisted living for some period of time.

Considering the aforesaid facts, the compensation awarded by learned Tribunal definitely calls for enhancement and it is appropriately enhanced from Rs.25,000/- to Rs.50,000/-. On the enhanced amount of the compensation i.e. **Rs.25,000/-**, the claimant-Pooja shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the cross-objections, till realization of the enhanced amount of compensation.

Accordingly, the impugned Award dated 23.04.2010 stands



modified, to the extent, as indicated aforesaid. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

In view of the aforesaid observations, both the cross-objections filed by the claimants stands allowed.

July 25, 2024	(ARCHANA PURI)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	Yes/No