

A.F.R.

Court No. - 2

Case :- FIRST APPEAL FROM ORDER No. - 2124 of 2021

Appellant :- Roop Lal And Another

Respondent :- Suresh Kumar Yadav And 2 Others

Counsel for Appellant :- Mohd. Naushad Siddiqui

Counsel for Respondent :- Vipul Kumar, Shreesh Srivastava

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Hon'ble Ajai Tyagi, J.

1. This appeal has been preferred by the claimants-appellants against the judgment and award dated 24.08.2021 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Kanpur Dehat (hereinafter referred to as 'Tribunal') in M.A.C.P. No. 116 of 2018 (Roop Lal and Another Vs. Suresh Kumar Yadav and others), whereby the learned Tribunal awarded a sum of Rs.1,80,000/- as compensation to the claimants with interest at the rate of 7.5% per annum.

2. The claimants-appellants have preferred this appeal for enhancement of quantum.

3. The brief facts of the case are that a claim petition was filed before the learned Tribunal by the claimants-appellants with the averments that on 18.03.2018 claimant-appellant no.1, Roop Lal was walking with his son on Kakvan Road within the jurisdiction of police station Bilhaur District Kanpur Nagar. At that time, a truck bearing no. U.P.93 BT 4990 who was being driven very rashly and negligently by its driver, hit the son of the appellant no.1 from behind due to which he fell on the road and front wheel of the truck ran over him. Appellant no.1's son sustained fatal injuries and died on the spot. The deceased was a child of aged about 7 years.

4. The respondents filed their respective written statements.

Learned Tribunal after considering the evidence on record, awarded Rs.1,80,000/- to the appellants-claimants who are deceased's father and mother respectively.

5. Aggrieved mainly with the compensation awarded, the appellants preferred this appeal.

6. Heard Mr. Mohd. Naushad Siddiqui, learned counsel for the appellants, Mr. Vipul Kumar, learned counsel for the respondent no.3 and Mr. Shreesh Srivastava, learned counsel for the respondent nos.1 & 2. Perused the record.

7. The accident is not in dispute. The issue of negligence has been decided in favour of the appellants herein. The Insurance Company has not challenged the liability imposed on it by the Tribunal. The only issue to be decided is the quantum of compensation.

8. This is a claimants appeal, claiming enhancement of award for the death of a child who was 07 years of age at the time of his death. Learned counsel for the appellants has submitted that deceased was a brilliant student and he had very bright future. This aspect is not considered by the Tribunal. It is also submitted by learned counsel for the appellants that the notional income of the deceased is taken Rs.15,000/- per annum by the Tribunal. It is next submitted that learned Tribunal has held that the contribution of the deceased towards his family was only assumed as 1/2 of his income and in this way the Tribunal has awarded only 1/2 of his income as compensation, which is not just and proper.

9. *Per contra*, learned counsel for the Insurance Company has submitted that the compensation awarded by the Tribunal is just and proper and the judgment and award passed by Tribunal also does not suffer from any such infirmity or illegality which may call for any

interference by this court.

10. The learned counsel for the appellants has contended that the award is bad and relied on decision of this Court and *Apex Court* in ***Kishan Gopal and another v. Lala and others, 2013 (101) ALR 281 (SC) = 2013 (131) AIC 219 = 2014 (1) AICC 208 (SC) and Manju Devi's case, 2005 (1) TAC 609 = 2005 AICC 208 (SC)*** relied by this Court in its recent decision of this Court in ***United India Insurance Company Limited. Vs. Mumtaz Ahmad and Another, 2017 (2) AICC 1229*** wherein this Court held as follows:

"6. Sri Ram Singh has heavily relied on the decision in the case of Kishan Gopal and another v. Lala and others, 2013 (101) ALR 281 (SC) = 2013 (131) AIC 219 = 2014 (1) AICC 208 (SC) and Manju Devi's case, 2005 (1) TAC 609 = 2005 AICC 208 (SC). It goes without saying the notional figure fixed by the Apex Court since Manju Devi's judgment has been consistently Rs.2,25,000 for children below the age of 15 years. I think that is just and proper and hence, the amount requires to be enhanced from Rs.1,57,000 to Rs.2,25,000 with 6% be recovered from the owner. The appeal is partly allowed. The cross-objection is also partly allowed."

11. The judgment of ***Kisan Gopal (Supra)*** cannot be made applicable to the facts of this case as in this case the apex court did not deduct any amount towards personal expenses.

12. Recently, the Hon'ble Apex Court has decided the controversy and settled the law regarding the death of a child in ***Kurvan Ansari @ Kurvan Ali and another Vs. Shyam Kishore Murmu and another, 2021 (4) TAC 673 (Supreme Court)***. In this case, the Hon'ble Apex Court has stated that in spite of repeated directions, Scheduled-II of Motor Vehicles Act, 1988 is not yet amended. Therefore, fixing notional income of Rs.15,000/- per annum for non earning members is not just and reasonable. It is further stated by the *Apex Court* that in

view of the judgments in the cases of *Puttamma and others Vs. K.L. Narayana Reddy and another, 2014 (1) TAC 926* and *Kishan Gopal and another v. Lala and others, 2013 (4) TAC 5*. It is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupees and cost of living.

13. With the aforesaid observations, the Hon'ble *Apex Court* took the notional income of the deceased at Rs.25,000/- per annum, hence we are of the considered view that notional income of the deceased must be assumed Rs.25,000/- per annum as he was non-earning member. Accordingly, when the notional income is multiplied with applicable multiplier '15' as prescribed in Scheduled-II for the claims under Section 163-A of the Motor Vehicles Act, 1988, it comes to Rs.3,75,000/- towards loss of dependency. The appellant nos.1 & 2 are also entitled to a sum of Rs.40,000/- each towards filial consortium and Rs.15,000/- funeral expense. Hence, the appellant nos.1 and 2 are entitled to the following amount towards compensation;

(i) Loss of Dependency : $25,000/- \times 15 = \text{Rs.}3,75,000/-$

(ii) Filial consortium : $40,000/- \times 2 = \text{Rs.}80,000/-$

(iii) Funeral expenses : Rs.15,000/-

(iv) Total compensation : Rs.4,70,000/-

14. We hold that in view of the latest decision of the *Apex Court* in *National Insurance Co. Ltd. Vs. Mannat Johal and Others, 2019 (2) T.A.C. 705 (S.C.)*, the appellant nos.1 and 2 shall be entitled to the rate of interest as 7.5% per annum from the date of filing the claim petition.

15. In view of the above, the appeal is **partly allowed**. Judgment and award passed by the Tribunal shall stand modified to the aforesaid

extent. The respondent-Insurance Company shall deposit the amount within a period of 08 weeks from today with interest at the rate of 7.5% from the date of filing of the claim petition till the amount is deposited. The amount already deposited be deducted from the amount to be deposited.

Order Date :- 04.01.2022

P.S.Parihar

(Ajai Tyagi, J.)

(Dr. Kaushal Jayendra Thaker, J.)