

A KURVAN ANSARI ALIAS KURVAN ALI & ANR.

v.

SHYAM KISHORE MURMU & ANR.

(Civil Appeal No. 6902 of 2021)

B NOVEMBER 16, 2021

[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]

- Motor Vehicles Act, 1988: s.163-A – Notional income – Determination of – Claim made under s.163-A – Deceased child - not an earning member – Tribunal considered notional income as per Schedule II for fixing compensation – Claimant seeking enhancement of compensation – Held: It was observed in Puttamma & Ors. that the Central Government was bestowed with the duties to amend Schedule-II in view of s.163-A(3), but it failed to do so – In view of the same, specific directions were issued in the said case*
- D to the Central Government to make appropriate amendments to Schedule-II keeping in mind the current cost of living – In spite of repeated directions, Schedule-II was not amended – Therefore, fixing notional income at Rs.15,000/- p.a. for non earning member was not just and reasonable – In view of the judgments in Puttamma, R.K. Malik and Kishan Gopal, it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living – Notional income of deceased fixed at Rs.25,000/- p.a. and compensation awarded accordingly.*

Partly allowing the appeal, the Court

- F HELD:** The Tribunal awarded compensation by taking notional income of the deceased at Rs.15,000/- per annum. It was observed in *Puttamma* 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/- towards compensation for the non-earning children up to the age of five years old and a sum of Rs.1,50,000/- for the non earning persons

of more than five years old. In the case of *R.K. Malik* also, this Court had 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*, where the deceased was a ten years old child, this Court had fixed his notional income at Rs.30,000/- per annum. In this case, the accident occurred on 06.09.2004. In view of the judgments in *Puttamma*, *R.K. Malik* and *Kishan Gopal*, it is a fit case to increase the notional income by taking into account the inflation, devaluation of the rupee and cost of living. The notional income of the deceased is taken at Rs.25,000/- per annum. [Paras 12-16][370-D-H; 371-B-C] A

Puttamma & Ors. v. K.L. Narayana Reddy & Anr. (2013) 15 SCC 45 : [2013] 16 SCR 831; Kishan Gopal & Anr. v. Lala & Ors. (2014) 1 SCC 244 : [2013] 10 SCR 793 – relied on. B

Rajendra Singh & Ors. v. National Insurance Company Limited & Ors. (2020) 7 SCC 256 – held inapplicable. C

R.K. Malik & Anr. v. Kiran Pal & Ors. (2009) 14 SCC 1 : [2009] 10 SCR 87 – referred to. D

Case Law Reference E

[2013] 16 SCR 831	relied on	Para 8	
[2013] 10 SCR 793	relied on	Para 8	
[2009] 10 SCR 87	referred to	Para 8	F
(2020) 7 SCC 256	held inapplicable	Para 9	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6902 of 2021.

From the Judgment and Order dated 03.08.2018 of the High Court of Jharkhand at Ranchi in Miscellaneous Appeal No.66 of 2011. G

S. N. Bhat, Adv. for the Appellants.

Anubhav, Yashwant Singh Yadav, Ms. Preeti Yadav, Ravi Karhana, Amit Kumar, Rajesh Kumar, Rameshwar Prasad Goyal, V. S. Chopra, Ms. Manjeet Chawla, Advs. for the Respondents. H

- A The Judgment of the Court was delivered by
R. SUBHASH REDDY, J.
1. Leave Granted.
2. This Civil Appeal is preferred by the appellants - claimants in
- B M.A. No.66 of 2011, preferred before the High Court of Jharkhand at Ranchi, aggrieved by the judgment and order dated 03.08.2018.
3. Necessary facts, in brief, for disposal of this Appeal are that on 06.09.2004, while the son of the appellants - claimants viz., Ibran Ali, a boy aged about 7 (seven) years studying in Class-II, was standing by the
- C side of the road in front of his maternal grandparents' house, a motorcycle has dashed him causing grievous injuries resulting in his death. The said vehicle was driven by one Mr. Sunil Gurum and owned by respondent No. 1 and insured with respondent No. 2.
4. On account of the said accident which resulted the death of the
- D child of the claimants, they filed a Claim Petition under Section 163-A of the Motor Vehicles Act, 1988 claiming compensation. Before the Motor Accidents Claims Tribunal, it was the case of the claimants that the accident has occurred due to rash and negligent driving of the driver of the offending motorcycle; the deceased boy was aged about 7 years at the time of accident and he was studying in Class-II. The Tribunal by
- E appreciating oral and documentary evidence on record, has come to the conclusion that the accident has occurred due to rash and negligent driving of the motorcycle's driver viz., Sunil Gurum. The Tribunal, considering notional income of the deceased at Rs.15,000/- per annum, by applying multiplier '15', awarded compensation of Rs.2,25,000/- with interest @6%
- F per annum from the date of judgment. Since the driver of the offending motorcycle Mr. Sunil Gurum was not possessing valid driving licence at the time of accident, the Tribunal directed respondent No. 2 -Insurance Company to pay the compensation to the claimants and recover the same from its owner.
- G 5. Pleading contributory negligence, the insurance company had preferred M.A. No. 115 of 2011, for enhancement of compensation, the claimants have preferred M.A. No. 66 of 2011, before the High Court of Jharkhand at Ranchi.
- H 6. By the impugned judgment, the High Court has dismissed the appeal preferred by the Insurance Company and partly allowed the appeal

preferred by the claimants by awarding a further sum of Rs.15,000/- towards funeral expenses. Thus, it is held that the appellants are entitled to a sum of Rs.2,40,000/- towards compensation with interest as awarded by the Tribunal from the date of filing Claim Petition.

7. We have heard Sri S.N. Bhat, learned counsel for the appellants, and Sri V.S. Chopra, learned counsel for respondent No. 2 - Insurance Company.

8. Sri S.N. Bhat, learned counsel for the appellants, mainly contended that the compensation awarded by the Tribunal as confirmed by the High Court is on lower side and is not just and fair. The learned counsel has contended that the compensation was awarded by assuming income of the deceased notionally at Rs.15,000/- per annum as per Schedule-II of the Motor Vehicles Act, 1988 which is applicable to the claims made under Section 163-A of the Motor Vehicles Act, 1988. It is submitted that the notional income of Rs.15,000/- was fixed as early as in the year 1994 and somehow, the same is continued in the statute without any amendment in spite of repeated directions by this Court. It is submitted that in view of the provision under Section 163-A(3) of the Motor Vehicles Act 1988, though it was obligatory on the part of the Government to amend Schedule-II, same as fixed in the year 1994, continued since then. Thus, it is submitted that the notional income as fixed, is to be considered by taking into account increase in the cost of living. In support of his arguments, the learned counsel for the appellants has relied on the judgments of this Court in the cases of *Puttamma & Ors. v. K.L. Narayana Reddy & Anr.*¹, *R.K. Malik & Anr. v. Kiran Pal & Ors.*² and *Kishan Gopal & Anr. v. Lala & Ors.*³.

9. On the other hand, Sri V.S. Chopra, learned counsel for respondent No.2 - Insurance Company, has submitted that there are no grounds to interfere with the impugned judgment of the High Court and placed reliance on the judgment of this Court in the case of *Rajendra Singh & Ors. v. National Insurance Company Limited & Ors.*⁴.

10. Having heard the learned counsel for the parties, we have perused the impugned judgment and the other material placed on record.

¹ (2013) 15 SCC 45

² (2009) 14 SCC 1

³ (2014) 1 SCC 244

⁴ (2020) 7 SCC 256

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- A 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.
- D 12. In the judgment in the case of **Puttamma & Ors.**¹, 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 non-earning persons of more than 5 (five) years old.
- G 13. In the case of **R.K. Malik & Anr.**² 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.
- H 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 A for non-earning members is not just and reasonable.

15. In view of the judgments in the cases in **Puttamma & Ors.¹**, R.K. Malik & Anr.² and **Kishan Gopal & Anr.³**, 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.⁴** relied on by the learned counsel for respondent No.2-Insurance Company would not render any assistance to the case of the insurance company. B

16. In view of the above, we deem it appropriate to take notional income of the deceased at Rs.25,000/- (Rupees twenty five thousand only) per annum. Accordingly, when the notional income is multiplied with applicable multiplier '15', as prescribed in Schedule-II for the claims under Section 163-A of the Motor Vehicles Act 1988, it comes to Rs.3,75,000/- (Rs.25,000/- x Multiplier 15) towards loss of dependency. The appellants are also entitled to a sum of Rs.40,000/- each towards filial consortium and Rs.15,000/- towards funeral expenses. Thus, the appellants are entitled to the following amounts towards compensation: C

(a) Loss of Dependency : Rs. 3,75,000-00

(b) Filial Consortium : Rs. 80,000-00

(Rs.40,000/- x 2)

(c) Funeral Expenses : Rs. 15,000-00

Total : Rs. 4,70,000-00 F

17. Accordingly, the appellants are entitled for a sum of Rs.4,70,000/- (Rupees four lakhs seventy thousand only) towards total compensation with interest at 6% per annum from the date of claim petition till the date of realisation. The enhanced compensation shall be apportioned between the appellants as ordered by the Tribunal. The entire compensation shall be paid to the appellants by respondent No. 2 - Insurance Company, and we keep it open to the Insurance Company to recover the same from respondent No. 1 - owner of the motorcycle by initiating appropriate proceedings as the motorcycle was driven by the G H

A driver who was not possessing valid driving licence on the date of the accident.

18. Accordingly, this Civil Appeal is allowed partly with directions as indicated above. No order as to costs.

Devika Gujral

Appeal partly allowed.