

(2007) 12 UK CK 0047
In the Uttarakhand High Court
Case No : A.O. No. 159. of 2007

Bhure Lal Rastogi and another	Vs	APPELLANT
Sri Shukhvinder Singh and others		RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 158(6), 173

Citation : (2008) 1 UC 645

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Sri G.C. Lakhchaura and Sri S.C. Bhatt, for the Appellant; Sri P.C. Maulekhi, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Rajesh Tandon, J.—Heard Sri G.C. Lakchaura & Sri S.C. Bhatt, counsel for the Appellant and Sri P.C. Maulekhi, counsel for the Respondent No. 4. This is an appeal filed by the claimant for enhancement of the award.

2. By the present A.O. filed u/s 173 of the Motor Vehicles Act, 1988, Appellant has prayed for setting aside the award, dated 11-8-2004 passed by the Motor Accident Claims Tribunal / Addl. District Judge / IInd Fast Track Court, Udham Singh Nagar in Motor Accident Claim Petition No. 88 of 2003, whereby, the claimant has been awarded a sum of Rs. 1,32,000/- along with interest @ 6% per annum.

3. Briefly stated, a claim petition was filed by the claimant/appellant being Motor Accident Claim Petition No. 88 of 2003 claiming a sum of Rs. 3,20,000/- towards compensation.

4. According to the claimant, on 6-03-2003 at about 5.45 p.m. when Pradeep Kumar Rastogi (hereinafter referred to as the deceased) was going to Gaurikhera (Sitarganj) on his Bicycle, as soon as he reached Nai Mandi Gate Amaria Road, a truck No. HNG 4385, which was from the opposite side and being driven rashly

and negligently by its driver dashed the deceased and the deceased died on the spot. At the time of accident, the deceased was 15 years of age. On account of this, the claimants have claimed a sum of Rs. 10,80,000/- towards compensation along with interest @ 12% per annum.

5. Sukhvinder Singh has contested the claim petition by filing a written statement stating therein that the amount of compensation is excessive and the accident did not occur on account of the rashness and negligence of the driver of the truck in question, but it occurred due to rashness and negligence on the part of the deceased himself. It has further been stated that at the time of accident, all the papers of the truck in question were valid and effective. It has further been stated that the truck in question was insured with the New India Assurance Company and if there is any liability to pay the compensation, Insurer will be liable to pay the same.

6. Insurer has also contested the claim by filing a written statement Paper No. 28 Kha stating therein that no information was given to the company regarding the occurrence u/s 158(6) of the Motor Vehicles Act and there was no permit to drive the said truck on the said road. It has further been stated that the driver of the truck in question was not holding valid driving licence and the accident took place due to own negligence of the deceased, thus, the Insurer is not liable to indemnify the amount of compensation. It has further been stated that the amount claimed towards compensation is excessive.

7. On the pleadings of the parties, the claims tribunal has framed following issues:

8. On behalf of the claimant, Bhure Lal and Naresh Kumar Rastogi have been examined as P.W. 1 and P.W. 2 respectively. Towards the documentary evidence, the claimant has filed per list 20 Ga four documents i.e. true copy of the First Information Report, true copy of the charge Sheet, true copy of the Panchayatnama and certified copy of the Post Mortem Report.

9. Owner of the truck in question has filed per List 15Ga/1 five documents i.e. copy of the Registration Certificate, copy of the fitness certificate, copy of the driving licence, copy of the Insurance Cover Note and copy of the Tax Payment Receipt. On behalf of the owner, affidavit of Satnam Singh D.W.1 has been filed.

10. While deciding the issue as to whether the said accident had taken place on 6-3-2003 at about 5.45 p.m. near Nai Mandi Gate Amaria Road Sitarganj Udhm Singh Nagar due to rash and negligent driving of the driver of Truck No. HNG 4385, in which Pradeep Kumar Rastogi died, claims tribunal has relied upon the Photostat copy of the First Information Report, copy of the Post Mortem Report and the statement of the Naresh Kumar. First Information Report shows that the accident had taken place due to rash and negligent driving of the driver of the truck in question. Post Mortem Report shows that there was some lacerated wound, injuries in the stomach and injuries on the heart. Relying upon the aforesaid documents, claims tribunal has recorded a finding that the accident

took place due to rash and negligent driving of the driver of Truck No. HNG 4385, in which the deceased died. This issue has been decided in favour of the claimants.

11. I do not find any illegality or infirmity in the aforesaid finding and the same deserves to be confirmed.

12. While deciding the issues as to whether the claimants are entitled to get any compensation and other relief, claims tribunal has assessed the age of the deceased as 15 years and since there was no documentary proof regarding the income of the deceased, the claims tribunal has taken Rs. 15,000/- as annual income. From the said amount 1/3rd of the personal expenses has been deducted and then the annual dependency comes to Rs. 10,000/- . Further the claims tribunal has assumed the age of the father as 40 years and mother between 36 to 40 and taking into consideration the age of the parents, the claims tribunal has selected multiplier of 13. Thus, multiplying the annual dependency with multiplier of 13, the amount of compensation has been worked out to Rs. 1,30,000/-. Besides this, the claims tribunal has awarded a sum of Rs. 2,000/- towards funeral expenses. Thus, the claims tribunal has awarded a total sum of Rs. 1,32,000/- towards compensation. So far as the liability to pay compensation is concerned, the claims tribunal has recorded a finding that since, the Insurer has not denied regarding insurance of the truck with it and there was a valid driving licence of the driver, therefore, the liability to pay the compensation shall be of the Insurer.

13. While deciding the issue No. 4 as to whether at the time of accident, the driver of the Truck No. HNR 4385 was holding valid driving licence, claims tribunal has relied upon the Photostat copy of the driving licence and the first information report, which shows that at the time of accident, the papers and driving licence had been recovered from the driver, which were valid. Thus, this issue has been decided accordingly.

14. I do not find any illegality or infirmity in the aforesaid finding and the same deserves to be confirmed.

15. Counsel for the Appellant has submitted that the IIInd Schedule of the Motor Vehicles Act, 1988, in case of a non earning person, a notional income of Rs. 15,000/- per annum and a multiplier of 15 must be used.

16. In Kaushalya Devi v. Shri Karan Arora 2007 (4) Supreme 29. In the said case it has been observed as under:

5. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling 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 cases, where parents are claimants, relevant factor would be age of parents.

(a) In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life-time. But this will not necessarily bar the parent's claim and prospective loss will find a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of *Taff Vale Rly. v. Jenkins* (1913) AC 1, and Lord Atkinson said thus:

...all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the Plaintiff. These are, no doubt, pregnant pieces of evidence but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them." (See *Lata Wadhwa and Others Vs. State of Bihar and Others*,).

6. This Court in *Lata Wadhwa's* case (supra) while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

(a) In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

7. These aspects were highlighted in *New India Assurance Co. Ltd. Vs. Satender and Others*,). Applying the principles indicated in last named case (supra) to the facts of the parents case, and the fact that the husband of the Appellant has already died, we find no scope for interference with the quantum awarded.

17. In the case of *New India Assurance Company Ltd. v. Satender and Ors.* 2006 (8) Supreme 870

, it has been observed as under:

7. In *Mallett v. Mc Monagle* 1970 (AC) 166, Lord Diplock analysed in detail the uncertainties which arise at various stages in making a rational estimate and practical ways of dealing with them. In *Davies v. Taylor* (1974) AC 207, it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the necessity for compensating the real loss. But a practical approach to the calculation of the damages has been stated by Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) 1 All ER 657 in the following words:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required to be spent for his won personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase.

9. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendour of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an 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 cases, where parents are claimants, relevant factor would be age of parents.

10. In case of death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessary bar the parents' claim and prospective loss will find a valid claim provided that the parents' establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of *Taff. Vale Rly. v. Jenkins* (1913) AC 1. and Lord Atkinson said thus:

.....all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the Plaintiff. These are, no doubt, pregnant pieces of evidence but

they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them." (See *Lata Wadhwa and Others Vs. State of Bihar and Others*,).

11. This Court in *Lata Wadhwa's* case (*supra*) while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

12. In case of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimate basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

18. In view of the above, I do not find any error or illegality in the award passed by the claims tribunal as the deceased was of tender age, unmarried and was a non earning member and the claimants are the parents of the deceased and it appears that the award has very rightly been given.

19. Counsel for the Appellant has further submitted that the interest is on the lower side.

20. In *Managing Director, T.N.S.T.C. v. Sripriya and Ors.* [2007(67) ALR 813] Supreme Court, the Apex Court has observed as under:

10. In regard to choice of the multiplicand the Halsbury's Laws of England in Vol. 34, para 98 states the principle thus:

98. Assessment of damages under the Fatal Accidents Act, 1976. - The Courts have evolved a method for calculating the amount of pecuniary benefit that dependants could reasonably expect to have received from the deceased in the future. First the annual value to the dependants of those benefits (the multiplicand) is assessed. In the ordinary case of the death of a wage-earner that figure is arrived at by deducting from the wages the estimated amount of his own personal and living expenses.

The assessment is split into two parts. The first part comprises damages for the period between death and trial. The multiplicand is multiplied by the number of years which have elapsed between those two dates. Interest at one-half the short-term investment rate is also awarded on that multiplicand. The second part is damages for the period from the trial onwards. For that period, the number of years which have based on the number of years that the expectancy would probably have lasted; central to that calculation is the probable length of the deceased's working life at the date of death.

15. Considering the age of the deceased appropriate multiplier would be 12. The income fixed by the Tribunal and the deduction for personal expenses do not warrant any interference. Worked out on that basis, the entitlement of the loss of income is Rs. 5,76,000. The other expenses awarded unaltered. In other words, total entitlement of the claimant is fixed at Rs. 6,00,000. It would be appropriate to fix the rate of interest at 7.5% instead of 9% as done by the Tribunal and maintained by the High Court.

21. In view of the above, the interest shall be payable @ 7.5% in place of 6% per annum.

22. Subject to modification in the rate of interest, A.O. is dismissed. No order as to costs.