

(2001) 07 CAL CK 0015

In the Calcutta High Court

Case No : F.M.A. No's. 1633 of 2000 and 76 of 2001

Fatama Matul Bibi and Another

APPELLANT

Vs

Oriental Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 19-07-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2003) ACJ 365

Hon'ble Judges : Samaresh Banerjea, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Krishanu Banik, for the Appellant; K.K. Das and P.K. Pahari, for the Respondent

Final Decision : Allowed

Judgement

Samaresh Banerjea and Pranab Kumar Chattopadhyay, JJ.—In both the appeals a common question of law as well as fact having been involved, with the consent of the parties these two appeals have been heard analogously and will be governed by the same judgment.

2. An appeal being P.M.A. No. 76 of 2001 has been preferred by the claimants against the judgment and award dated 11.9.2000 passed by the learned Judge, Motor Accidents Claims Tribunal, Alipore, South 24-Parganas, in M.A.C. Case No. 482 of 1999 allowing the application u/s 166 of the Motor Vehicles Act, 1988 and awarding a compensation for a sum of Rs. 60,000 only.

3. The victim in this case was a child aged about 12 years and was a student of class III. The appeal has been filed by the claimants for enhancement of the amount of compensation.

4. Another appeal being P.M.A. No. 1633 of 2000 has also been filed by the claimant for enhancement of the amount of compensation. In the instant case, the victim was a child aged about 12 years and she was a student of class IV before her death.

5. In both the appeals Mr. Banik, the learned Counsel appearing on behalf of the appellants has contended relying on a few decisions of the Hon''ble High Court as also the Hon''ble Supreme Court that in the matter of assessment of compensation safer guidance is to follow the structured formula as indicated in the Second Schedule to the Motor Vehicles Act, 1988 treating the notional income of the child as Rs. 15,000 per annum.

6. Mr. Das and Mr. Pahari, learned Counsel appearing on behalf of the respondent, insurance company, respectively in the aforesaid two appeals, have joined issue and have argued, inter alia, that in case of death of a child although structured formula may be applied, but the age of the victim as child should not be taken for assessing Rs. 15,000 per annum as notional income. Mr. Das and Mr. Pahari have also relied on a large number of decisions of different High Courts, where structured formula has not been followed.

7. After considering the respective submissions of the parties and on perusal of the materials on record and also after going through different judgments cited by the parties, it appears to us that in case of death of a child different High Courts have not followed any consistent guidelines either in the matter of fixing any income for the purpose of assessment of compensation or in the matter of using multiplier and decided the cases upon examining in each individual case what would have been the prospects of the child in future and what would have been such loss of income to the family. We feel after considering the entire matter on record and after going through all the judgments that in the matter of assessment of compensation in case of death of a child, the structured formula as indicated in the Second Schedule to the said Act being a safer guidance, is to be followed as held by the Apex Court in the case of Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, . It is true that in the aforesaid case, the victim was not a child but an adult. But we refer to such decision of the Apex Court for the reason that even though in the aforesaid case before the Supreme Court an application was made u/s 166 of the said Act and the structured formula provided in the Second Schedule to the said Act was introduced for application u/s 163A of the said Act, Supreme Court found that even in a case of application u/s 166, structured formula is a safer guidance for arriving at the amount of compensation.

8. In the case of Kaderkunju and Another Vs. Maheswaran Pada Nair and Others, , Apex Court held that a sum of Rs. 2,22,000 would be reasonable compensation for the death of a victim who was 17 years old and a student of Mechanical Engineering.

9. Gujarat High Court in the case of Ramdevsing V. Chudasma Vs. Hansrajbhai V. Kodala, , assessed the notional income of the minor victim who was six years old at Rs. 15,000 per annum and applied multiplier of 15 as provided in the said Schedule. In the aforesaid case, the application was no doubt made u/s 163A of the said Act. But as pointed out hereinbefore the question is not whether the court is concerned with the application u/s 163A or u/s 166 of the said Act, but

the question is what will be the procedure to be followed for the assessment of compensation in case of death of a victim, who is a minor or child. In the aforesaid case, Gujarat High Court applied the structured formula obviously and presumed income or the notional income at Rs. 15,000 per annum as provided in Second Schedule.

10. A Division Bench of Himachal Pradesh High Court in the case of Himachal Road Transport Corporation and Another Vs. Bimla Devi and Others, , inter alia, held that even in case of death of a minor child, the future prospects have to be taken into consideration for determination of compensation, parents are to be compensated for future dependency benefits or accretion to the estate. Himachal Pradesh High Court while deciding the matter was not unmindful of the fact that in the determination of compensation, element of speculation may be more in case of minor compared to the death of a grown up person who has actual earning capacity. Nevertheless, the future dependency benefits or accretion to the estate, in such cases, can be determined after taking into consideration the family background, academic achievement of the child and other material available including the age of the child and respective age of the parents. Therefore, after considering such facts, the High Court held that Rs. 15,000 per annum at least would have been taken as notional income and, therefore, assessed the compensation.

11. In the case of Rajasthan State Road Transport Corporation Vs. Kanchan Bai and Others, , Rajasthan High Court had awarded compensation to the tune of Rs. 1,54,000 where the victim was a boy and a student of class VIII. Following the decision of the Supreme Court in the case of Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, Rajasthan High Court held that there can be no uniform law for measuring the value of human life and the measure of damages cannot be arrived at by precise arithmetical calculations. It is true that the claimant should not be permitted to make the fortune that has befallen, but, at the same time, the determination of the quantum of compensation must be liberal and not niggardly since law values life and limb in a free country in generous scales. On such view the court held that the award of Rs. 1,44,000 by the Tribunal was quite reasonable.

12. Orissa High Court in the case of Powmex Steel Ltd. Vs. Gopal Krishna Chand and Others, , enhanced the compensation awarded by the Tribunal to Rs. 1,50,000 where a minor being a student of Plus II was the victim.

13. Apex Court in the case of K. Murugesh and Others Vs. M. Palappa and Others, , enhanced the compensation to Rs. 1,00,000 although the Tribunal awarded a sum of Rs. 35,800, where the victim was a student aged about 18 years.

14. Mr. Das, learned advocate appearing on behalf of the respondents has relied on following decisions of different High Courts to show that in all such cases different High Courts did not apply the structured formula, but decided in each of

the cases what was the amount of compensation that should be paid:

Bapu and Others Vs. Karan Singh and Another, ; Rani Barman and Others Vs. Anupam Paul Choudhury and Others, ; Dharma Ram and Another Vs. Pema Ramji and Others, ; Bhan Bai Vs. Surjit Singh Bhatiya and Others, ; K. Samikkanu Vs. Union of India and Another, ; Karnataka State Road Transport Corporation, Bangalore Vs. Dharmanna and Another, ; Rushi Prusti Vs. Orissa State Electricity Board and Others, ; Harbansi Devi and Others Vs. Rakesh Kumar alias Kala and Others, ; Gulzar Mohammad and Another Vs. Bikka and Others, ; Amati Hymavathi and Another Vs. Nissankararao Srikrishnamurthy and others, ; New India Assurance Co. Ltd. Vs. Archana Kumari and Others, ; Smt. Venkatamma Vs. Surendrappa and Others, and Binod Kumar Choudhary v. Kamal Narain Thakur 1999 ACJ 46 (Patna).

15. In all such cases as it appears to us that different High Courts considered the future prospects of the child and also dependency benefits or accretion to the estate, but fact remains that in ultimate analysis in the matter of assessment, no guideline was applied and we do not find any reason on what basis ultimately the amount which was awarded in each case, which appears to us, to be quite nugatory. We are not inclined to follow such decisions. The reason is as pointed out hereinbefore, although we are concerned that in determination of compensation element of speculation may be more in case of minor, and future dependency benefit or accretion to the estate in such cases can be determined after taking into consideration the family background, academic achievement of the child and other material available, but even such determination, it appears to us, remains in the realm of speculation. We are of the view that structured formula is a safer guidance for arriving at the amount of compensation in any other matter, even in case when the child is a victim. Applying such principle in the cases before us, the claimants are entitled to larger compensation than the amount which has been awarded.

16. In F.M.A. No. 1633 of 2000 an application u/s 163A of the Motor Vehicles Act has been made and the Tribunal has awarded a sum of Rs. 52,000 as compensation. In F.M.A. No. 76 of 2001 a sum of Rs. 60,000 has been awarded.

17. For the reason stated above, in our view, in each case the victim being a minor and having no income, we should proceed on the footing that the income of such child would have been Rs. 15,000 per annum and following the structured formula in each case, where the child is below 15 years, multiplier of 15 should be applied and after deducting 1/3rd amount towards family expenses, a sum of Rs. 1,50,000 becomes compensation.

18. Both the appeals are, therefore, allowed. The judgment and award in each of the appeals is hereby set aside. In each case the claimant is entitled to compensation amount to Rs. 1,50,000 together with interest at the rate of 12 per cent per annum from the date of the application on the amount enhanced by us.

19. We are informed that in each of the cases the amount awarded by the Tribunal has already been deposited by the insurance company. Therefore, the balance of the awarded amount together with such interest will be deposited by the insurance company within six weeks from the date of communication of this order before the Tribunal and in each of the cases the claimant would be entitled to withdraw the same without furnishing any security.