
(2008) 08 DEL CK 0015

In the Delhi High Court

Case No : MAC App. No. 409 of 2008

ICICI Lombard General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Mala Devi Mehra, Sh. Om Prakash Mehra, Sh. Pradeep
Kumar and Sh. Naresh

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 168, 173

Citation : (2006) ACJ 2620 : (2008) 105 DRJ 673

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Pankaj Seth, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as the "Act") has been filed by the Appellant/Insurance Company against the award dated 25.03.08 passed by Ms. Neena Bansal Krishna, Judge, Motor Accident Claims Tribunal (for short as the "Tribunal"), Delhi.

2. Brief facts of the case are that on 30.06.07 at about 11.15 p.m., the deceased Chintoo along with his brother Vicky and father were going towards Teliwara Subzi Mandi Chowk Mor, Azad Market when a delivery Van (Vikram) bearing No. DL-1-LH-5397 came for the side of Teliwara, at high speed and took sharp U turn because of which the vehicle could not be controlled. It over turned and fell over the deceased Chintoo and his brother Vicky. The deceased Chintoo expired in this accident.

3. The claim petition filed by the parents of the deceased Chintoo against the Respondent No. 3 herein, driver, Respondent No. 4 herein, owner of the offending vehicle and Appellant herein, as the offending vehicle is insured with them.

4. Vide impugned judgment, the Tribunal awarded compensation of Rs.

2,80,000/- along with the interest @ 7.5% from the date of institution of the petition till the date of its payment payable by all the Respondents to the claimants.

5. It has been contended by the Ld. Counsel for Appellant that the tribunal has erred in considering the future increase in the earning of the deceased despite the fact that the deceased at the time of accident was aged 12 years and was a student and was not working and earning. The Tribunal has also erred in law in presuming that the Second Schedule of the Act had become effective in the year 1994 and considering that there has been about 300% increase in the price index since 1994 to 2006 and considering the inflationary trends and rise in price index, it would not be unreasonable to assume that the notional income of the deceased would now be Rs. 30,000/- p.a. whereas in the Second Schedule, the notional income has been shown as Rs. 15,000/- p.a.

6. Ld. Counsel for the Appellant has relied upon the decision of the Apex Court in Kaushlya Devi Vs. Shri Karan Arora and Others, in support of its contentions.

7. The claimant Sh. Om Prakash deposed that the deceased Chintoo was 12 years old at the time of accident, and is survived by his father and mother and was not working. In the postmortem report, the age of Chintoo is shown as 12 years. Thus, the age of the deceased has been taken to be 12 years.

8. Thus, the Tribunal held;

The petitioner has deposed that his child was 12 years old at the time of his death and was not employed. In such circumstances, the notional income of the deceased may be held as Rs. 15,000/- per annum as has been provided in the II Schedule. The II Schedule had become effective in the year 1994. Considering that there has been about 300% increase in the price index since 1994-2006 and considering the inflationary trends and rise in price index, it would not be unreasonable to assume that the notional income of the deceased would now be Rs. 30,000/- per annum.

The Tribunal further held;

The deceased was an unmarried boy of 12 years. It can be reasonably expected that he would have got married at the age of about 23-24 years and thereafter, his contribution towards family would have reduced. In such circumstances, it can be expected that the deceased, on an average, would have spent 50% of his income on himself and would have contributed 50% towards parents, i.e., Rs. 15,000 per annum. The loss of dependency can thus be taken as Rs. 15,000/- per annum.

9. Thus, by applying the multiplier of 16 and after making one half deductions, the Tribunal awarded Rs. 2,40,000/-(Rs.15,000/-x16) towards the loss of dependency to the claimants.

10. No amount of compensation can compensate the loss of a life or can bring

back happiness in the lives of the dependant family members. However, it is clear from the various decisions of the Courts that compensation of varying amounts in regard to unfortunate death of young children had been awarded depending upon the facts and circumstances of each case. As regard the quantum of compensation, no decision as such can be taken to be of binding precedents. Each case has to be dealt with on its own peculiar facts, depending upon the financial & social status of the family in society, environment in which the deceased was brought up, his academic career and health of the deceased child and other relevant facts.

11. Under the provisions of the Act, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. But the only embargo is that it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence.

12. In cases of motor accidents, the endeavour is to put the dependents/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is, therefore, required to be paid for prospective pecuniary loss, i.e. future loss of income/dependency suffered on account of the wrongful act.

13. The difficulty arises in the cases of death of child is where they are not earning at the time of the accident. In most of the cases they were still studying and not working. Yet it cannot be said that the dependants have not suffered any pecuniary loss. Loss of dependency by its very nature is awarded for prospective or future loss.

14. In *Kaushlya Devi* (supra), the Apex Court has observed as under;

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 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.

The Court further observed as under;

In the 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 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*,).

15. This view was reiterated by the Apex Court in *New India Assurance Co. Ltd. Vs. Satender and Others*, .

16. In this case, the Apex Court granted the compensation of Rs. 1,80,000/- on death of a child aged 9 years. The Apex Court has observed as under;

In *Mallett v. McMonagle* 1969 ACJ 312, 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* 1973 ACJ 66 , 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 own 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.

17. As regards the contention of the Appellant Counsel that the Tribunal should have awarded the compensation as laid down in the Second Schedule of the Act, appears to be attractive but at the same time does not appear to be justified.

18. The Second Schedule u/s 163A of the Act was brought on the Statute Book in the year 1994 and since then no revision in the said Schedule has taken place. As per Section 168 of the Act it has to be borne in mind by the Tribunal that "just compensation" has to be made in the facts and circumstances of each case.

19. In this regard, the Apex Court also observed in *The Divisional Controller, KSRTC v. Mahadeva Shetty and Anr.* JT 2003 (6) SC 519, as under;

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 to it appears to be "just". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. 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 *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*,

20. *Ld. Counsel for the Appellant* has relied upon para 11 of the Apex Court decision in *Kaushlya Devi (supra)* in support of its contentions.

21. In this case, the Apex Court granted the compensation of Rs. 1,00,000/- on death of a child aged 14 years. The Apex Court has observed as under;

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.

22. In the present case, the notional income of the deceased has been taken as per Second Schedule of the Act and then considered the increase on the said income. But at the same time, the Tribunal has off set the increase in notional income, by deducting one half deductions on account of personal expenses, instead of 1/3rd from the income of the deceased, which is the usual formula.

23. So, in view of the above discussion, I do not find any infirmity or illegality in the impugned judgment passed by the Tribunal.

24. The compensation awarded by the learned Tribunal is just, fair and equitable.

25. Accordingly, the present appeal filed by the Appellant is hereby dismissed.