
(2016) 01 UK CK 0008

In the Uttarakhand High Court

Case No : Appeal from Order No. 294 of 2010

ICICI Lombard General Insurance Comp. Ltd.

APPELLANT

Vs

Master Ankur and Anr.

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2016) AAC 943 : (2016) 2 ACC 76 : (2016) 162 AIC 918 : (2016) 115 ALR 860 : (2016) 1 TAC 907

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Ramji Srivastava, Advocate, for the Appellant; Neeraj Garg, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Servesh Kumar Gupta, J. - Having heard the rival contentions of the learned counsels on behalf of the Insurance Company and for injured Master Ankur, what has been much agitated by the appellant before the Court is the quantum of compensation, as awarded by learned Trial Judge to the claimant to the tune of RS. 4,34,200/- against the claimed amount of RS. 21.00 lakh.

2. Learned counsel for the appellant has submitted that the injured was simply 8-years child who did not have any source of earning; even then, his monthly income has been accepted as rupees three thousand for evaluating the whole compensation; although 3rd out of such annual income has been deducted towards the personal expenses of the child.

3. Learned counsel for the appellant has also objected to awarding of compensation on many other scores viz. RS. 50,000/- for bodily and mentally pain/sufferings, RS. 50,000/- towards loss of physical disability, RS. 25,000/- for other expenses and further RS. 50,000/- for future prospects.

4. After hearing, it transpires that the accident occurred on 27.03.2007 at about

8.45 p.m. in Gwalior City where the father of the injured resided on account of his official duty. The offending Maruti Wagon-R Car bearing No.MP09-HE-9285 was insured for third party. When Master Ankur was going on the road along with his father, the car dashed the child, making him seriously injured. Since, his father was an army personnel, hence, the injured was immediately shifted to the Army Hospital based at Gwalior and later on, remained admitted in several higher centers, including the Army Hospital, Dehradun (when his father came on transfer in such city) for several months. Ultimately, as per the certificate issued by the Orthopedic Surgeon under the supporting signature of Chief Medical Officer and other two doctors of the same hospital, this child was declared 40% disable having Hemiparesis (mild) on the whole right portion of his body. This sufferance/disability of the child has been endeavoured to be compensated by awarding RS. 4,34,200/- along with 6 percent annual simple interest, from the date of institution of the petition, by the learned Trial Judge.

5. Learned counsel for the Insurance Company has placed reliance on the two precedents as under:-

(i) Kaushlya Devi v. Karan Arora and Others reported in 2007 AIR SCW 3424 (Hon"ble Supreme Court).

(ii) Bachan Singh v. Sachin and another reported in 2008 (1) U.D. 200 (Division Bench of Uttarakhand High Court).

6. I have gone through both these precedents and feel that in the light of peculiar facts of this case, both these precedents are at all not applicable in the controversy, in hand, for the reason that both these authorities deal with the situation where the child died as result of the accident, in question. In Kaushalya Devi's case, the child was aged about 14 years, his father had already died and the claim petition was filed by the mother of the deceased. The Hon"ble Apex Court, relying upon the judgment rendered by the House of Lords in a famous case of Taff Vale Railway v. Jenkins, (1913) AC 1 has observed as under:-

(8) "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.

(9) 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."

7. In *Bachan Singh's* case, it was an event where a 3- year infant had lost his life on account of the accident. So, in that situation, the Division Bench of this Court was of the view that annual income of the deceased child could not have been assessed in such an eventuality and it justified the total lump-sum award of Rupees One Lakh, with interest.

8. As the facts of both the precedents, relied upon by the learned counsel for the Insurance Company, have been briefed herein-above, it is evidently clear that the instant matter is quite different than the two matters, indicated above.

9. Here, an innocent child of eight years Master Ankur did not lost his life but he underwent great mental pain and agony for several months at least in 4-5 hospitals and ultimately, the whole right portion of his body was declared differently abled which was irreparable in nature. Although, this incapability of body has been assessed by the Medical Team to be only 40 percent, but for the life of such a child, the Court feels that it is more severe and miserable in the nature other than the mental suffering which either the mother or father of such child would have undergone, had their infant/adolescent son would have lost the life. The child has to make struggle in this competitive platform of the world for all the times to come during whole of his life. So, to compare the mental suffering/pain of the parents of a deceased child is unmatched with irony of a growing child who survived the accident and has to struggle with the whole society all around for his existence during his entire life span. Undoubtedly, I find that the manner of assessment/evaluation of compensation like monthly/annual income of such an innocent child is quite irrelevant and not applicable in such matters, and this way, I am of the view that learned Trial judge has routinely delivered the impugned judgment and this Court blatantly disapproves such a manner.

10. Looking to the views as expressed by the Hon''ble Apex Court about the future prospects of child, perceiving it in the background of his birth and bringing up, the annual lumpsum compensation to the best wisdom of the judge can be

evaluated and in that perspective, I find that the compensation to the tune of RS. 4,34,200/-, is not much. Rather, it is on the lesser side. However, the Court does not want to disturb the same in want of any appeal for enhancement.

11. All told, this appeal is devoid of any merit and it is, accordingly, dismissed. The amount, if any, lying deposited in this Court, be remitted to the concerned Tribunal forthwith for payment to the claimant.

12. Let a copy of this judgment and order along with LCR be sent to the Court concerned for information.