
(2009) 12 AHC CK 0190

In the Allahabad High Court

Case No : First Appeal From Order No. 1994 of 2009

Kanti Devi

APPELLANT

Vs

Bhagwan Das and Others

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2011) 7 RCR(Civil) 1579

Hon'ble Judges : Amitava Lala, J and Ashok Srivastava, J

Final Decision : Disposed Off

Judgement

1. This appeal has been made on behalf of the claimant being aggrieved and dissatisfied with the quantum of the award of Rs. 51,500/ on the death of minor child aged about 10 years. The judgment has been delivered by, the Tribunal on 4.3.2009. We find that the ratio of the judgment of this Bench reported in 2007 (4) TAC 388(AII.), where all the earlier judgments of the Supreme Court have been categorically considered, which is as follows:

"9. Therefore, it is crystal clear that none of the judgments proceeded on any uniform trend nor it can be. It has to be based on facts and circumstances of each case. Against this background, we have to ascertain what is the ratio decidendi available on the basis of the discussion from the aforesaid judgments. The ratio decidendi is that in arriving at "just" compensation the Court cannot proceed by adopting a straightjacket formula. It has to vary from case to case. The other ratio decidendi is that in case of death of minor children, there is no scope of ascertainment of income. It is also very difficult to assess future prospect. Against this background, now it is to be seen whether the legislature has made any provision to meet the requirement or not. The legislature has made a table called as the "Second Schedule" under Section 163A of the Act. Section 163A of the Act provides special provisions for payment of compensation on the basis of structured formula therein. By now, it is well settled that even in a case of "just" compensation, the multiplier system of the Second Schedule as

far as practicable will be followed. We have no quarrel with such proposition. Our anxiety is when the law is explicit to bring the nonearning persons under the heading of notional income, why the children, who are actually nonearning persons, can not be brought under such protective umbrella uniformly to arrive at a quantum of compensation. Why there should be futile exercise for determination of their income on the future prospect by applying multiplier method in general. According to us, several thoughts have been given about multiplier system but such multiplier system cannot be applicable for the entire Second Schedule. The same will be applicable only in respect of the first heading of the Schedule with a note at the bottom about reduction by 1/3rd on account of the expenses which the victim would have incurred towards maintaining himself had he been alive. How does it applicable towards children? When there is no income, there is no deduction. A social piece of legislation is always mass based but not made with a mind set of class. Nobody can assume who will be genius or prosperous in future only on the existing family structure. Mahatma Gandhi (since deceased) never knew about the fate of his son when father of Abraham Lincon (since deceased) never knew about fate of his son. In any event, if any claimant insists for adopting structured formula, it will be entirely open for him or them. Therefore, choice of the claimant, being the carriage of proceeding, will become prime. If the claimant chooses to go by the multiplier system under the first heading of the Second Schedule, it will be entire risk and responsibility of the claimant to prove the case. However, according to us, uncertainty of the income of children is matching with the notional income but militating with the scheduled income and deduction thereto. None of the above referred cases have shown any guide line why the multiplier method will only be applicable even in the case of death of children when entire schedule is not covered by such method. Therefore, if the claim petition is made on the basis of notional income or the Court feels that notional income will be appropriate to ascertain the claim of the claimant in case of death of a children, the Court will not be slow or hesitant in awarding compensation on the basis of the notional income of Rs. 15,000/ p.a. under 6th heading of the Second Schedule. It is also to be remembered in this context that composite analysis of two three Judges' Bench of the Supreme Court in National Insurance Company Limited (supra) and Jeevanlal Ltd. and others (supra) is that when an Act is a social welfare legislation and in construing so the Court should adopt a beneficent rule of construction and if a section is capable of two constructions, that construction should be preferred which fulfills the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. We do not find any ambiguity in understanding the gravity of situation and making an observation that there is no necessity of making further exercises unnecessarily when the law is explicit to award compensation to nonearning persons to the extent of Rs. 15,000/p.a. particularly on the repeated observations of the Supreme Court itself in Satender (supra) and Kaushalya Devi (supra) that in case of young children of tender age, in view of the uncertainties around, neither their income at the time of death nor the prospects of the future increased in their income nor chances of

advancement of their career are capable of proper determination on estimated basis."

2. Therefore, apparently the judgment and order dated 4.3.2009 can not be held to be sustainable. This is more so in view of the judgment delivered by the Bench reported in 2008(3) AWC 2717 which has been subsequently followed in 2008 (1) TAC 483 (All.) as well as the Supreme Court latest judgment reported in 2009(3) TAC 1 (SC).

3. Therefore, we set aside the order impugned at the stage of admission and remit back the matter for consideration keeping the eyes open in respect of the judgment delivered by this Bench considering all earlier judgments of the Supreme Court with regard to the interpretation of law made by this Bench and pass appropriate award within a period of one month from the date of communication of this order upon giving fullest opportunity of hearing and by passing a reasoned thereon. However, at the time of passing the award the payment, if any, made on account of the earlier award will be adjusted.

4. No order is passed as to costs.