
(2002) 11 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.A. No. 772 of 1994 (J)

Kishan Pillay and Poonam Pillay	Vs	APPELLANT
Kishore Singh Chouhan and Others		RESPONDENT

Date of Decision : 12-11-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2003) 1 MPJR 121

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Ashok Jain, for the Appellant; S.K. Rao, Advocate for respondent no. 3 and Exparte for respondent no. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

K.K. Lahoti, J.

Appellants are parents of deceased Renuka Pillay, who died in an accident occurred on 24.7.1991. At the time of the accident, the age of Renuka Pillay was 8 years and she was a student of KG-I.

The Tribunal after considering the evidence recorded a finding that respondent no. 2 Shrafat Ali who was driving Truck No. RNR 1255 reshly and negligently crushed Renuka Pillay. Though The claimants have claimed Rs. 4,40,000/- by way of compensation because of her death, but the Tribunal has awarded Rs. 45,000/- with interest at the rate of 12 % per annum to the appellants.

Aggrieved by which the appellants have filed the present appeal for enhancement of the compensation. The learned counsel appearing for appellants relied on judgment of the Apex Court in Lata Wadhwa and Others Vs. State of Bihar and Others, and contended that appellants are entitled for Rs. 2,25,000/- which has been fixed by the Apex Court in the case of the death of a child between the age group of 5 to 10 years and relying on the aforesaid judgment, the learned counsel for the appellants submits that the amount awarded by the Tribunal

deserves to be enhanced.

The learned counsel appearing for respondent no. 3 supported the award and contended that the award is just and proper and for a female child of 8 years, the Tribunal has rightly awarded compensation. He relied on judgments of the Division Bench of this Court in case of Devchand Vs. Babu Lal Foujdar Bus Service: 1997 ACJ 392, Khatoonbi and Others Vs. Prithvipal Singh and Another, and single Bench judgment of this Court in Madhya Pradesh State Road Trans. Corpn. and Another Vs. Pratap and Another, and contended that the compensation of Rs. 50,000/- may be awarded to the appellants.

The Division Bench of this Court in the case of Khatoonbi (supra) has considered the adequacy of the compensation and it is held:

5. In M.A. No. 70 of 1991 (Claim Case No. 39 of 1980), it has come in the evidence of Khatoonbi that her son Abdul Karim aged about 15-16 years was working in a factory on the salary of Rs. 150 per month. The Tribunal taking in view the future prospects of life, determined his income at Rs. 200 per month and yearly Rs. 2,400, it applied multiplier of 20 and worked out the amount of compensation at Rs. 48,000/-. After deducting 1/6th of the said amount for lump sum payment, awarded Rs. 40,000/- as compensation. In our opinion, the amount of Rs. 40,000/- is on lower side. The amount payable u/s 140 of the Motor Vehicles Act, 1988 under no fault liability is Rs. 50,000/-. In our opinion, in view of this in case of death, no amount less than Rs. 50,000/- can be awarded. Parliament inserted section 92-A of the Motor Vehicles Act, 1939, and made provisions for payment of compensation for the death or permanent disability caused in a motor accident on the principle of no fault liability. Initially, the amount payable under the Section was Rs. 15,000/- for death. In section 140 of Motor Vehicles Act, 1988 this amount was enhanced to Rs. 25,000/- and it was further enhanced to Rs. 50,000/- by Amending Act 54 of 1994 which came into force on 14.11.1994. This raising of the amount from time to time shows the intention of Parliament that the loss of human life in motor accident shall not be assessed less than Rs. 50,000/-. It is well settled that the provisions of Section 92-A or 140 have no retrospective effect but it is legislative guideline which should be taken into consideration by this court while assessing compensation. The Apex Court in R.L. Gupta v. Juptier Genl. Ins. Co. Ltd. 1990 ACJ. 280 (SC), observed that enactment of section 92-A is a positive indication of the legislative intent that in case of death the compensation awarded shall not be less than the amount payable under no fault liability and keeping in view the provisions of "no fault liability" awarded compensation of Rs. 20,000/- to the L.Rs of the deceased. This court in case of Devji v. Anwarkhan, 1989 ACJ 567 (MP) and Karuram v. Om Prakash, 1989 ACJ 941 (MP) took the view that compensation provided under the provisions of "no fault liability" should be taken into consideration. As stated earlier, since 14.11.1994, the amount of compensation under the provisions of "no fault liability", has been raised to Rs. 50,000/-. In our opinion, the compensation amount deserves to be enhanced to Rs. 50,000/-.

Similar view has been taken in the aforesaid two judgments, but the Apex Court in the recent judgment in case of *Lata Wadhwa (supra)* has considered the adequacy of the compensation. In the case of a child below ten years, the apex Court has found that a uniform sum of Rs. 50,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs. 25,000/- has to be added. The Apex court in para 11 of the judgment held:

11. In case of the 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 parents' claim and prospective loss will found 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* 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 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. There 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.

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any material on the reasonable expectation of pecuniary benefits, which the parents expected. In case of a bright and healthy boy, his performance in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student, but as has been stated earlier, not an iota of material was produced before Shri Justice Chandrachud to enable him to arrive at a just compensation in such cases and, therefore, he has determined the same on an approximation. Mr. Nariman, appearing for TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is irrecoupable, and no amount of money could compensate the parents".

Considering the aforesaid, the Apex Court found that apart from minimum compensation of Rs. 50,000/-, the parents are entitled for conventional compensation of Rs. 25,000/- which has to be added in minimum compensation.

Considering the aforesaid, the Apex Court has found that the parents of a minor child below ten years are entitled minimum of Rs. -75,000/- by way of compensation. In view of the recent judgment of the Apex Court, the minimum compensation for which parents are entitled is Rs. 50,000/- which is to be further added by conventional compensation of Rs. 25,000/-.

In view of the aforesaid, this appeal is allowed. It is held that the parents of the deceased are entitled minimum compensation of Rs. 50,000/-, which is to be further enhanced by conventional compensation of Rs. 25,000/-. The total amount comes to Rs. 75,000/- for which appellants are entitled and accordingly the compensation awarded to the appellants is enhanced to Rs. 75,000/-. For this amount, the appellants will also be entitled interest at the rate of 9 % per annum from the date of the application till payment of compensation.

With the aforesaid, this appeal is allowed with no order as to costs.