

(2005) 01 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 28 of 1995

Leela Devi and Another

APPELLANT

Vs

Narinder Pal Singh and Others

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A

Citation : (2006) ACJ 2637 : (2006) 1 RCR(Civil) 500 : (2005) 1 ShimLC 404

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : H.K. Bhardwaj, for the Appellant;

Judgement

Deepak Gupta, J.—This appeal has been filed by the parents of the deceased, Ganesh Kumar, who died in an accident on 10.3.1992. Deceased was on his bicycle when he was hit by scooter No. CH 01-B 4255. He succumbed to the injuries sustained by him in the accident. Thereafter a claim petition was filed by appellants for grant of compensation. The Tribunal has come to the conclusion that the just and equitable compensation payable is only Rs. 29,000, but has awarded Rs. 50,000, i.e., the minimum amount which can be awarded as no fault liability u/s 140 of the Motor Vehicles Act.

2. Learned Counsel for the appellants has vehemently contended that the amount of compensation granted was extremely meagre and the Tribunal has not taken into consideration the future earning prospects of the deceased. The appellants submit that the compensation should be awarded in consonance with the judgments of Apex Court in Lata Wadhwa and Others Vs. State of Bihar and Others, and M.S. Grewal and Another Vs. Deep Chand Sood and Others,

3. In Lata Wadhwa and Others Vs. State of Bihar and Others, , the Supreme Court was dealing with cases relating to the death of the children of the employees of TISCO. Justice Y. V. Chandrachud, former Chief Justice of India, was appointed by the court to determine the compensation and the Apex Court

in cases of children between the ages of 10 and 15 awarded a sum of Rs. 4,10,000 out of which Rs. 3,60,000 was towards loss of monetary benefits and Rs. 50,000 as additional sum. It would be pertinent to mention that the judgment of the Supreme Court is based on totally different facts. In that case it had been proved that in TISCO there was a tradition that every employee could get one of his children employed in the company. It was under these circumstances that the loss of dependency was taken at Rs. 24,000 per month. This cannot apply as uniform rule in all the cases and each case has to be decided on its own facts. In the present case there is no evidence to show as to what the deceased who was a student of class 8 and aged about 13 years would have earned, in future.

4. Similarly the ratio of *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, is also not applicable because there compensation of Rs. 5,00,000 per child was awarded on lump sum basis. In fact in para 31 the Hon'ble Supreme Court has noticed that a number of cases were cited before it wherein the quantum granted was between Rs. 30,000 and Rs. 1,50,000. Relying upon *Lata Wadhwa and Others Vs. State of Bihar and Others*, the Supreme Court upheld the judgment of the High Court whereby it had awarded Rs. 5,00,000 to the parents of each child. This judgment was given in the peculiar facts of the case wherein number of minor students of the school who were taken to picnic died due to negligence of teachers who were supposed to look after them. It is in the factual situation of the said case that the award of Rs. 5,00,000 has been made.

5. Even while holding that the judgment of the Supreme Court in these two cases cannot be applied straightaway for the grant of compensation, one has to take into consideration the law laid down by the Supreme Court in *Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad*, ; *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, and *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, . In *Susamma's* case, Apex Court observed as under (para 8):

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed up over the period for which the dependency is expected to last.

6. This was approved by the Supreme Court again in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, and it was held as under (para 15):

We thought it necessary to reiterate the method of working out "just"

compensation because, of late, we have noticed from the awards made by Tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of Tribunal/court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/court has to determine a fair amount of compensation award-able to the victim of an accident which must also be proportionate to the injury caused.

7. The approach of the Tribunal, to say the least, is pedantic. It is impossible to estimate the magnitude of calamity that has fallen on the parents. All the joy of their life has been taken away by this tragedy. No amount of money can bring back to the helpless parents their dead son. It will take a lot of time for the intensity and finality of the loss to dawn upon the parents. The law at best can provide relief, in the only manner known to it, namely, in financial terms. However, niceties of calculations can help us only to a point.

8. It is no doubt true that in cases of very young children, no basis exist for estimating the future pecuniary benefits which the parents could be said to have lost by the death. The prospects of employment and of financial assistance to the parents who look up to their dutiful children for such assistance are remote in future and any estimate has to be, by its intrinsic nature, speculative. Such an estimate of chances of future monetary contribution to the parents are based on the earnings of the deceased and other myriad uncertainties and imponderables of the future.

9. In cases of children one aspect is also to be kept in mind that it is normally children who belong to the lower middle class and poorer section of the society, who render financial assistance to their parents. Children of the parents in fact inherit the wealth of the parents and are usually not required to render financial assistance to them. Where there is more than one child, the parents cannot be exclusively depending on one child. They may provide emotional help, but this is not taken into account while considering the compensation under Motor Vehicles Act.

10. While calculating the compensation in the case of a child the court has to balance the equities. All children are not necessarily dutiful. However, keeping in view the Indian family system, it is expected of a child to look after his parents. Sometimes this hope may not be fulfilled. Children go and settle abroad. Some children settle within India, but at a distant place. Sometimes it is the children who are dependent on the parents as long as the parents are alive. However, we have to go by conventional wisdom and the award has to be made on conventional basis.

11. The Apex Court in *Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad*, while dealing with the death of a 20 years old young boy awarded Rs. 50,000. A Division Bench of this Court in *Himachal Road Transport Corporation*

and Another Vs. Bimla Devi and Others, , where parents aged 42 and 37 years had claimed compensation for the death of a 14 years old boy were awarded Rs. 84,000.

12. After the amendment of the Motor Vehicles Act, 1988 in the year 1994, Section 163-A has been added. According to this section, compensation is payable as per the structured formula keeping in view the age of the deceased.

13. this Court is not unmindful of the fact that the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , has cautioned that the Table which is the Second Schedule attached to the Motor Vehicles Act is full of errors. However, the Apex Court has also laid down that the said Table can be used as a good guide for fixing the multiplier.

14. Even if the provisions of Section 163-A are not applicable in a particular case, such as the present one where the accident had occurred prior to the amendment, the structured formula can be made a basis for award of compensation, especially in case of children where it is very difficult to assess what their future income would be.

15. A Division Bench of Calcutta High Court in Fatama Matul Bibi and Another Vs. Oriental Insurance Co. Ltd. and Another, , after taking into consideration number of decisions has held that the structured formula is a safe guideline for arriving at the amount of compensation payable when the victim is the child.

16. Now coming to the facts of the present case. The mother of the deceased was 42 years old. The parents have four other children. The father of the deceased is an Instructor in the I.T.I, and the other siblings are all studying. Keeping in view all the relevant facts, future earnings of the deceased can be assessed at about Rs. 2,500 per month and the contribution for the parents at Rs. 800 per month or Rs. 9,600 per year. The multiplier applicable in this case, keeping in view the age of the parents and the age of the deceased, would be 15. The compensation on this account comes to Rs. 1,44,000. In addition to this, claimants are entitled to conventional damages and funeral expenses, etc., at Rs. 6,000 and compensation is enhanced to Rs. 1,50,000. Appeal is allowed in the aforesaid terms and the compensation is enhanced from Rs. 50,000 to Rs. 1,50,000. The respondents are jointly and severally liable to pay the compensation. Since the vehicle was insured with respondent No. 3, it is liable to pay and deposit the said amount. The claimants are also held entitled to interest on the enhanced amount at the rate of 9 per cent per annum w.e.f. 30.6.1992, the date of institution of the petition. In case the amount is not paid to the claimants or deposited within 2 months from today the rate of interest shall stand enhanced to 12 per cent per annum w.e.f. today. Appeal is disposed of in the aforesaid terms. No costs.