

(2009) 12 GUJ CK 0055
In the Gujarat High Court
Case No : First Appeal No. 3657 of 1998

Maharajsingh Dinsasingh Bhadoria and Others APPELLANT
Vs
Surendra C. Zaveri and Another RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 168

Citation : (2009) 12 GUJ CK 0055

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Hemant S. Shah, Nos. 1 - 5, for the Appellant; P.V. Nanavati, for Defendant No. 2 and Vibhuti Nanavati, for Defendant No. 2, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocates appearing on behalf of respective parties.

2. The appellant claimants has challenged award passed by Motor Accident Claims Tribunal, Ahmedabad in Motor Accident Claim Petition No. 1181 of 1996 Ex.28 decided on 19th March 1998. The claims tribunal has awarded Rs. 91,400/- being an amount of compensation with 12% interest in favour of claimants and rest of claims are rejected. The claimants have filed claim petition claiming Rs. 4 lakhs before claims tribunal u/s 166 of Motor Vehicles Act, 1988. According to claimant, deceased Shivkumar sustained bodily injuries resulting into death in a motor accident while riding on bicycle on account of rash and negligent driving of motor vehicle viz., Ambassador Car bearing registration No. GTE-2709 by the driver of said vehicle. On 14th may 1996, at about 5-45 p.m., deceased Shivkumar was coming through the area known as Bibi Talav on his bicycle and on that point of time, opponent No. 1 came from behind with his car in a rash and negligent manner and dashed his vehicle at the back of the cycle of deceased and caused serious injuries which resulted into death of said Shivkumar. The offending vehicle is owned by opponent No. 2 and insured with opponent No. 3. According to claimant, deceased was earning Rs. 3,500/- per

month in Jaylaxmi Dying Works. He was studying in 11th Standard and he was earning member of family. This claim petition was opposed by insurance company filing reply Ex.11. Thereafter, issues have been framed by claims tribunal. The question of negligence is not challenged before this Court by appellant, therefore, it is not necessary to be examined by this Court. The claimant has challenged the amount of compensation which has been awarded in favour of claimant by claims tribunal.

3. Learned advocate Mr. Hemant Shah submitted that deceased boy was aged about 15 years at the time of accident. He submitted that claims tribunal has committed gross error in assessing income of deceased and 2/3rd deduction is also contrary to law and dependency which has been worked out Rs. 350/- and 18 multiplier has been applied. But, claims tribunal has not considered future prospective income of deceased. He also submitted that accident occurred on 14th May 1996, at that time, Motor Vehicles Act has been amended on 14th November 1994 and Section 163A read with IInd Schedule came into force. Therefore, either case of deceased is to be considered under 2nd Schedule being a non-earning member or being a earning member, then, 1/3rd deduction is necessary, not 2/3rd deduction, because, deceased was unmarried and future prospective income is required to be considered which has not been considered by claims tribunal. Therefore, he relied upon decision of Apex Court in case of Shanti Bai and Others Vs. Charan Singh and Others, where, 18 years old boy belonging to labour class run over by truck leaving behind his destitute mother and two minor brothers one of whom was also a labourer @ Rs. 10/- per day. Therefore, taking a reasonable view of the victim's notional future income, the compensation of Rs. 40,000/- has been awarded by claims tribunal, held, too meager, therefore, it was enhanced by Apex Court Rs. 1,50,000/-. The relevant Para 3 is quoted as under:

3. An unfortunate accident took place where the appellant's eldest son. aged about 18 years was run over by the offending truck insured by the respondent-Insurance Company on 17-04-10991. In the claim petition a large amount was claimed by way of compensation amounting to Rs. 10 Lakhs which prima facie appeared to be unreasonable. The Tribunal after recording evidence awarded Rs. 40,000/-. The High Court dismissed the first appeal. In our view, as the victim was aged 18 years and belonged to a labour class and even his younger brother was doing labour work and getting Rs. 10 per day, it is obvious that the deceased, had he survived, would have earned a substantial amount per month for the benefit of the family as the appellants are his destitute mother and her minor children. In our view, total compensation of Rs. 40,000/- is too meager. Even taking a reasonable view of the amount which the deceased would have earned, had he survived, considering the future economic prospects of the deceased we deem it fit to increase the award to a lump sum amount of Rs. 1,50,000/-. Meaning thereby, the appellant will be entitled to an additional amount of Rs. 1,10,000/- as Rs. 40,000/- have already been awarded by the Tribunal. This additional amount of Rs. 1,10,000/- shall be deposited by the

respondent-Insurance company with 12% interest from the date of the claim petition till actual deposit. The said deposit shall be made within eight weeks from the date of the receipt of the copy of this order by the Insurance Company as it end. Office of this Court shall forthwith send the said copy to the respondent-Insurance Company for due compliance.

4. Learned advocate Mr. Hemant Shah has relied upon recent decision of Apex Court in case of R.K. Malik and Another Vs. Kiran Pal and Others, where, Apex Court has considered in case of death of child in accident considering 2nd Schedule which was already introduced when accident took place, therefore, notional income mentioning 2nd Schedule and multiplier specified therein and on the basis of pecuniary compensation for lost of dependency and thereafter Apex Court has confirmed future prospective income of children those who are minor died in accident. The Apex Court has worked out a compensation in case of death of children pecuniary and non- pecuniary damages. Towards pecuniary damages, Supreme Court and High Court on the basis of 2nd Schedule holding a some of Rs. 1,55,000/- to dependence of children between age group of 10 to 15 years and Rs. 1,65,000/- between 15 to 18 years found to be proper and they were also be entitled to non-pecuniary damages of Rs. 75,000/- being a future prospective income of minor. This aspect has been discussed by Apex Court in Para 32 to 34, which are quoted as under:

32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospect should have been be addressed by the courts below. While considering such claims, child's performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of Lata Wadhwa (supra) and M. S. Grewal (supra), the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in Lata Wadhwa (supra) and M. S. Grewal (supra), we deem it appropriate to grant compensation of Rs. 75,000/- (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

33. Besides, the Courts have been awarding compensation for pain and suffering and towards non-pecuniary damages. Reference in this regard can be made to R.D. Hattangadi case (supra). Further, the said compensation must be just and reasonable. This Court has observed as follows in State of Haryana and Another

Vs. Jasbir Kaur and Others,

7. 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 is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. 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.

34. So far as the pecuniary damage is concerned we are of the considered view both the Tribunal as well as the High Court has awarded the compensation on the basis of Second Schedule and relevant multiplier under the Act. However, we may notice here that as far as non-pecuniary damages are concerned, the Tribunal does not award any compensation under the head of non-pecuniary damages. However, in appeal the High Court has elaborately discussed this aspect of the matter and has awarded non-pecuniary damages of Rs. 75,000. Needless to say, pecuniary damages seeks to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses. In contrast, non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. In this context, it becomes duty of the court to award just compensation for non-pecuniary loss. As already noted it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the Court must be to provide a just, fair and reasonable amount as compensation keeping in view all relevant facts and circumstances into consideration. We have noticed that the High Court in present case has enhanced the compensation in this category by Rs. 75, 000/- in all connected appeals. We do not find any infirmity in that regard.

5. Therefore, relying upon aforesaid two decisions of Apex Court, learned

advocate Mr. Hemant Shah submitted that claimants are entitled future prospective income of Rs. 75,000/- as well as deceased boy was aged 15 years, therefore, Rs. 1,55,000/- on the basis of 2nd Schedule.

6. Learned advocate Mr. Vibhuti Nanavati raised contentions before this Court that no evidence was produced by claimant in respect of education and other surrounding circumstances as well as status of parents for considering future prospective income of deceased. He submitted that 2/3rd deduction is because of unmarried boy is reasonable and therefore, 18 multiplier is considered to be just and proper. He submitted that 2nd Schedule is not applicable because claim petition was filed by claimant u/s 166 of MV Act. He relied upon one decision of Apex Court in case of Kaushlya Devi Vs. Shri Karan Arora and Others, where, deceased son of appellant and her husband was 14 years old at the time of accident. Rs. 1 lakh has been awarded being a compensation to claimant for death of minor. The minor son was died who was aged about 14 years. Respondent No. 1 came to the house of claimant and requested the deceased to accompany him in his car and car was driven by respondent No. 1. The vehicle met with an accident and deceased died. Respondent No. 2 - owner of vehicle stated that driver was a minor and thus, claim petition was not maintainable against him. Tribunal held that since the driver was a minor, he did not have any liability but owner of vehicle was liable to pay compensation, therefore, considering the fact that insurance company has no liability as driver was not authorised to drive any vehicle, therefore, Rs. 1 lakh was awarded along with 12% interest in favour of claimant. The relevant Para 8 to 11 are quoted 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 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.

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.

(See *Lata Wadhwa and Others Vs. State of Bihar and Others*,

10. This Court in *Lata Wadhwa's* case (*supra*) while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

11. 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.

7. The two decisions relied upon by learned advocate Mr. Vibhuti Nanavati reported in *Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others*, in case of *Syed Ibrahim and Ors. v. Oriental Insurance Co. Ltd.*, where, claimant's son was died who was aged about 7 years, lost his life in an accident. The Apex Court has confirmed award passed by claims tribunal Rs. 1,52,000/- in favour of claimant. In this case, the issue was that insurer was required to prove that there was violation of terms and conditions of the policy and willful breach on the part of insured as he was holding licence to drive any type of vehicle for which he was not licenced. But, compensation which has been awarded by High Court Rs. 1,52,000/- has been maintained by Apex Court. The relevant discussion is made in Para 9 which is quoted as under:

9. 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.

Except that, no other submission is made by both learned advocates before this

Court.

8. I have considered submissions made and decisions cited by both learned advocates. I have also perused award passed by claims tribunal. Issue No. 3 has been decided by claims tribunal. According to claimant, deceased's son was earning Rs. 125/- per day, but, same may be taken as Rs. 100/- per day considering 26 working days in a month is monthly income can be assessed Rs. 2,600/-. On behalf of claimant, learned advocate has suggested Rs. 3,300/- income of possibility of future prospect which may be considered. As against that, insurance company's advocate has disputed it and suggested Rs. 60/- per day income and Rs. 2,400/- monthly income can be assessed.

9. It is necessary at this stage that respondent No. 3 - New India Assurance Co. Ltd., whose advocate has made his submission in Para 15 which is as under:

15. As against the aforesaid submissions, it has been submitted by the learned advocate for the opponent No. 3 that the income of the father of the deceased is proved to be Rs. 60/- per day. The deceased was doing the similar work and therefore his income be taken at Rs. 60/- per day and not more. He submits that therefore monthly income of Rs. 2400/- per month can be assessed for the calculation of the compensation. That since the deceased was unmarried, dependency of the petitioners on him would be 1/3 of the total income of the deceased. He has submitted that the father of the deceased was also earning. The family was being run on the income of the deceased as well as the father of the deceased i.e. the petitioner No. 1 herein clubbed together. Therefore it can be said that even the petitioner was depended upon his father to an extent of Rs. 150 per month. On account of the death of the deceased, the dependency of the deceased on the income of the father is reduced by Rs. 150/- per month. He submits that therefore the real dependency of the petitioners on the income of the deceased can be assessed at Rs. 650/- per month and a multiplier of 15 can be adopted. He submits that Rs. 20,000/- be awarded to the petitioners towards loss of expectations of life and no funeral expenses can be awarded to the petitioners because the death of a person is always certain and therefore there are bound to be funeral expenses even in case of natural death. He submits that though it is unfortunate that the father had to perform the last rites of his son, but the said fact is not unnatural in as much as even in unfortunate natural death, in several cases, the father or the parents of the person have to perform the last rites. He therefore, submits that no funeral expenses can be awarded to the petitioners. He submits that there is no evidence to show that the deceased died in hospital. Therefore, at the most the deceased might have remained alive for hours i.e. during the process of he being brought to the hospital, therefore, reasonable amount may be awarded to the petitioner towards pain, shock and sufferings. He submits that interest at not more than 12% can be awarded to the petitioners.

10. In view of aforesaid paragraph, where, submission made by learned advocate on behalf of insurance company where Rs. 60/- per day income which monthly

Rs. 2,400/- suggested and deceased was unmarried, therefore, dependency of petitioner on him would be 1/3rd of total income of deceased and father of deceased was also earning and 15 multiplier has been suggested. The claims tribunal has in Para 17 discussed the facts that it transpires that deceased was engaging in paint and colour department of Jaylaxmi Industries. The claimant No. 1 who was father of deceased was also engaging for similar nature of work in Jaybharat Mills. The father admitted his deposition that he is earning Rs. 60/- per day Exh.24, where, according to claimant, father was earning Rs. 125/- per day out of said work. The certificate Exh.22 accepted by advocate of insurance company with consent, but, claims tribunal has considered that contents thereof are not proved, therefore, it has not been taken into account. The claims tribunal is having doubt about certificate and considered income of deceased Rs. 60/- per day and monthly income assessed Rs. 1,500/- and dependency has been worked out 1/3rd which comes to Rs. 350/- because, deceased was unmarried. Thereafter, 18 multiplier has been applied which total comes to Rs. 71,400/-.

11. Here claims tribunal has committed gross error in not considering evidence of claimant that his son was working in paint and colour department of Jaylaxmi Industries and Exh.22 which has been accepted by other side with consent also proved to the effect that deceased was earning member. In case when deceased was earning member in family, his future prospective income must have to be taken into consideration by claims tribunal which has not been taken into account at all by claims tribunal. Therefore, considering age of deceased 15 years minor and recent decision of Apex Court in case of R.K. Malik (supra), future prospective income of earning minor if it is to be considered Rs. 75,000/-, then, claimants are entitled enhanced amount of Rs. 75,000/- for compensation. The claims tribunal, therefore, committed gross error ignoring future prospective income of earning minor deceased which has been recently considered by Apex Court in case of R.K. Malik (supra), therefore, according to my opinion, claimants are entitled Rs. 75,000/- more being enhanced amount for compensation of death of minor son Shivkumar.

12. The award passed by claims tribunal concerned is not a rational and reasonable and it can consider to be unjust and improper for not considering future prospective income of earning minor who died in accident. Recently, identical case has been examined by Karnataka High Court in case of Sesappa Poojary and Others Vs. P.K. Karunakara and Another, The relevant Para 10, 13 and 14 are relevant, therefore, same are quoted as under:

10. More recently, in Manju Devi v. Musafir Paswan 2005, ACJ 99 (SC), which was a case of a 13 years old boy, who was killed in an accident in the year 1998, the Tribunal had awarded a fixed sum of Rs. 90,000/- which it had held to be just, proper and reasonable. On an appeal for enhancement, the High Court had dismissed the same. The Apex Court in enhancing the compensation held as follows:

(2) In the case of U.P. State Road Transport Corporation and Others Vs. Trilok

Chandra and Others, it has been held by this Court that there should be no departure from the multiplier method on the ground that payment being made is just compensation. It has been held that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is the method which brings uniformity and certainly to awards made all over the country. In view of this authority, it will have to be held that the award of compensation had to be made by the multiplier method.

(3) As set out in the second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs. 15,000/- must be taken as the income. Thus, the compensation comes to Rs. 2,25,000/-.

(4) We accordingly, modify the award to be in a sum of Rs. 2,25,000/- with interest as awarded. The appeal stands disposed of accordingly. No order as to costs.

13. This Court in *S. Sana Ulla and Another Vs. A.R. Shivashankar and Others*, was dealing with a case involving the death of a 13 years old boy. The appellants were the claimants seeking enhancement of compensation. The Tribunal had awarded Rs. 1,51,500/- with 8 per cent interest. On a comparative analysis of the compensation awarded to children between 10 and 15 years by the various High Courts and by Apex Court, in the case of *Manju Devi v. Musafir Paswan* 2005 ACJ 99 (SC), held that the various High Courts, following the judgment in *Manju Devi's* case (supra) have consistently awarded Rs. 2,25,000/- for the death of children aged between 10 and 15 years and that it would be appropriate if compensation is enhanced to Rs. 2,25,000/- with interest at 6 per annum.

14. On a study of the above cited cases, the following principles emerge:

(a) The amount of compensation recoverable in respect of death of a minor by the claimants in a petition u/s 166 of Motor Vehicles Act, 1988 depends upon the particular facts and circumstances - there can be no ceiling placed on the amount recoverable.

(b) Parents are entitled to recover as compensation the present cash value of the prospective service of the deceased minor child and reasonable compensation for the loss of present services [see (j) below].

(c) Compensation payable is towards loss of pecuniary benefits reasonably expected after the child attains majority. Dependency can be estimated by computing the annual contribution which the child would have made from the date of his probable earning, except as indicated in (j) below.

(d) Reasonable probability as regards the minor child growing into adulthood and being more successful than the parent (as it ought to be the expectation of every parent) and correspondingly working towards higher levels of income may be accepted if supported by material to indicate such a possibility with reasonable certainty. The older the child, less would be left to chance, as there is bound to

be material to point to a strong possibility of the deceased child becoming a successful adult.

(e) As dependency lasts only for the lifetime of the parents, the multiplier to be applied is the one appropriate to the age of the younger of the parents.

(f) Dependency need not be deemed to cease on the marriage of the minor, though it may be reduced, having regard to the traditions and practices in this country.

(g) Dependency may vary given the social and economic condition of the family of the deceased. For example, an affluent parent is not likely to depend on the earnings of his child as would a less well-to-do parent.

(h) Deduction towards the personal expenses of the deceased can not be uniformly taken at one-half, this will depend on the facts of the case.

(i) Nominal compensation has been awarded in the past in case involving children above 5 years and below 10 years and so also in the case of children below 5 years. This need not be a rule for all time to come. With improved and assured basic health, educational and other needs becoming available to the general populace in greater numbers, by the year if not by the day, it is possible to award higher amounts of compensation even in respect of such cases and in view of the progressive increase in longevity, denial of compensation on the basis of mortality rates amongst very young children in the past decades, can not be sustained.

(j) There are several decided cases where it has been observed that compensation can not be granted to the parents in the event of death, due to accidents, of very young children for the reason that it would be many years before they actually become earning members. While on the other hand, the parents would in fact require to continue to spend money and effort for several years in nurturing the child to become a successful adult. But it has never been considered in those decided cases that money and effort has already been expended on the child even up to the date of death, which is lost. It is also not taken into consideration that even a very young child is capable of running errands and attending to chores for the parents even at a tender age. The loss of such services can not be undermined. The loss in this regard needs to be compensated reasonably and well, depending on the facts and circumstances of the case.

13. Accordingly, first appeal filed by claimant is required to be partly allowed and award passed by claims tribunal Exh.28 dated 19th March 1998 is required to be modified instead of Rs. 91,400/-, it comes to Rs. 1,66,400/- being an additional enhanced amount of Rs. 75,000/-, for which, being a future prospective income of deceased minor earning son as compensation with 12% interest from date of filing claim petition till its realisation.

14. Accordingly, first appeal is partly allowed to aforesaid extent.

15. It is directed to respondent No. 2 - New India Assurance Co. Ltd., to deposit enhanced amount of Rs. 75,000/- with 12% interest from date of filing claim petition till its realisation before claims tribunal within a period of two months from date of receiving copy of present order.

16. After realising said amount from respondent No. 2 - insurance company, it is directed to claims tribunal concerned to pay entire amount by account payee cheque in name of Maharajsingh Dinsasingh Bhaloriya, after proper verification, immediately.

17. R. & P., if available, be sent back to claims tribunal concerned, forthwith.