(2013) 04 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 173 of 2012

National Insurance Company Ltd. APPELLANT

Vs

Meenu Din and Others RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2013) 171 PLR 444

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : R.N. Singal, for the Appellant; Anil Malik for Respondent Nos. 1 and 2 and Ms. Rajni, for the Respondent

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—The present appeal has been filed by the Insurance Company to challenge award dated 28.9.2011 passed by Motor Accident Claims Tribunal, Bhiwani on the ground that compensation awarded by the Tribunal is on the excessive side keeping in view the age of the deceased child as he was only 3-1/2 years of age on the date of accident and compensation amounting to Rs. 3,75,000/- has been awarded by relying upon one judgment of Delhi High Court. Learned counsel for the appellant submits that in such like cases the compensation has not been awarded more than Rs. 2 lacs and as such the compensation amount is liable to be reduced.

2. Briefly, the facts of the case are that the claimant Meenu Din was returning from the shop along with his grand son after purchasing some articles and on reaching near a road, a Tata 407 which was being used for transportation of chickens and being driven in a rash and negligent manner hit Dinesh due to which multiple injuries were caused. The injured was shifted to General Hospital, Dadri but he succumbed to his injuries during the course of treatment. The accident was witnessed by one Nar Singh and the matter was reported to the police by Ram Mehar. The driver of the offending vehicle fled away from the spot

and FIR No. 198 dated 24.5.2010 was registered under Sections 279, 304-A IPC at Police Station Sadar Bhiwani. The deceased was 3-1/2 years of age at the time of accident.

3. A claim petition was filed before the Tribunal by the parents of the deceased which was allowed vide award dated 28.9.2011 and compensation was awarded to the tune of Rs. 3,75,000/- to the claimants which was to be paid jointly and severalty by the respondents. The interest at the rate of 6% per annum was also awarded from the date of filing of the claim petition.

4. The present appeal has been filed by the Insurance Company for reduction of amount of compensation only on the ground that more compensation has been awarded keeping in view the age of the deceased.

5. Learned counsel for the claimants submits that a well reasoned order has been passed by learned Tribunal and the deceased child was the future of the claimants and compensation cannot be said to be on the higher side.

6. Heard arguments of learned counsel for the parties and have also perused the impugned award as well as other documents on the file.

7. The accident and death of minor child has not been disputed by the appellant. The appeal has been filed only on the ground that compensation in such like cases is never granted more than Rs. 2 lacs.

8. The argument of learned counsel for the Insurance Company is that normally the amount of compensation is awarded approximately Rs. 2 lacs but in the present case the amount of compensation being Rs. 3,75,000/- is on the excessive side. Learned counsel for the appellant has relied upon judgments rendered in FAO No. 5556 of 2002 (The Oriental Insurance Co. Ltd. Vs. Saroj Rani alias Urmila and Others, decided on 26.8.2010, FAO No. 2773 of 2003 (Mohammad Sheikh alias Gabbar and another v. Karan Singh and others,) decided on 6.10.2010 and FAO No. 1798 of 2001 (Harpreet Kaur wife of Maninder Singh and another v. Kulwinder Singh son of Mohan Singh and others,) decided on 25.8.2010.

9. While awarding compensation, the Tribunal has relied upon the judgment of Delhi High Court in case titled Chiranji Lal and Another Vs. Mangat Ram and Others, wherein the deceased girl was nine years of age and was student of 3rd standard. Her parents were awarded compensation to the tune of Rs. 60,000/- by the Tribunal and which was on appeal enhanced by Delhi High Court to Rs. 2,25,000/- towards pecuniary damages and following second schedule of the Motor Vehicles Act, Rs. 75,000/- is awarded towards non pecuniary damages and Rs. 75,000/- is awarded towards future prospects and total compensation awarded comes to Rs. 3,75,000/-. The judgments relied upon by learned counsel for the appellant are not applicable to the facts and circumstances of the present case as they belong to the period much earlier to the present case. During this period, value of currency has decreased and the compensation which was

awarded much earlier cannot be made applicable in the present case. The Delhi High Court while deciding the issue involved in Chiranji Lal''s case (supra) has observed as under:

23. In Common Cause, A Registered Society Vs. Union of India and Others, it was observed:

128. The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognized by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In re: Mediana, (1900) AC 113, Lord Halsbury, L.C. observed as under:

How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident.... But nevertheless the law recognizes that as a topic upon which damages may be given.

24. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. A human life cannot be measured only in terms of loss of earnings or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/ monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life". This head of compensation need not be restricted to a case where the injured person himself initiates the action but is equally admissible if his dependant brings about the action.

25. That being the position, the crucial problem arises with regard to the quantification of such compensation. The injury inflicted by deprivation of the life of a child is extremely difficult to quantify. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solatium is difficult to specify. The courts have therefore used the expression "standard compensation" and "conventional amount/sum" to get over the difficulty that arises in quantifying a figure as the same ensures consistency and

uniformity in awarding compensations.

26. While quantifying and arriving at a figure for ''loss of expectation of life'', the Court has to keep in mind that this figure is not to be calculated for the prospective loss or further pecuniary benefits that has been awarded under another head, i.e., pecuniary loss. The compensation payable under this head is for loss of life and not loss of future pecuniary prospects. Under this head, compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. This compensation is paid for loss of prospective happiness which the claimant/victim would have enjoyed had the child not been died at the tender age.

27. In the case of Lata Wadhwa and Others Vs. State of Bihar and Others, wherein several persons including children lost their lives due to a fire accident, the Court awarded substantial amount as compensation. No doubt, the Court noticed that the children who lost their lives were studying in an expensive school, had bright prospects and belonged to upper middle class, yet it cannot be said that higher compensation awarded was for deprivation of life and the pain and suffering undergone on loss of life due to financial status. The term "conventional compensation" used in the said case has been used for non pecuniary compensation payable on account of pain and suffering as a result of death. The Court in the said case referred to Rs. 50,000/- as conventional figure. The reason was loss of expectancy of life and pain and suffering on that account which was common and uniform to all regardless of the status. Unless there is a specific case departing from the conventional formula, non-pecuniary compensation should not be fixed on basis of economic wealth and background.

28. In Lata Wadhawa''s case, wherein the accident took place on 03.03.1989, the multiplier method was referred to and adopted with approval. In cases of children between 5 to 10 years of age, compensation of Rs. 1,50,000/- was awarded towards pecuniary compensation and in addition a sum of Rs. 50,000/- was awarded towards ''conventional compensation''. In the case of children between 10 to 18 years compensation of Rs. 4,10,000/- was awarded including "conventional compensation". While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs. 24,000/- per annum instead of Rs. 12,000/- per annum as FAO. No. 401/1999 Page 10 of 19 recommended by Justice Y.V. Chandrachud Committee. This was in view of the fact that the company in question had an unwritten rule that every employee can get one of his children employed in the said company.

In view of the facts and law position explained above, the amount of compensation awarded by learned Tribunal is reasonable and no interference is required. The appeal being devoid of any merit is dismissed.

