(2015) 10 AHC CK 0016

In the Allahabad High Court

Case No : First Appeal from Order No. 285 of 2009

Om Prakesh Verma APPELLANT

Vs

Krishna Goel RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163-A, 163-A(3), 166, 168

Citation : (2016) 1 ALJ 68

Hon'ble Judges : S.S. Chauhan and Anant Kumar, JJ.

Bench : Division Bench

Advocate : Shakeel Ahmad Ansari, for the Appellant; Ashwani Kumar, Brijesh Singh, Lalit Kumar Tiwari and Ramesh Chandra Sharma, for the Respondent

Final Decision : Partly Allowed

Judgement

Anant Kumar, J.—This first appeal from order under Section 173 of the Motor Vehicles Act 1988 has been filed for enhancement of compensation by the appellants against the judgment and award dated 27.11.2008, passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No. 4, Faizabad in Claim Petition No. 162 of 2006 (Om Prakash Verma Vs. Krishna).

2. Brief facts, relevant for disposal of this appeal, are that appellants/claimants had filed a Motor Accident Claim Petition No. 162 of 2006 (Omprakash Verma and another Vs. Smt. Krishna Goyal and another), before the learned Motor Accident Claim Tribunal, Faizabad with the assertion that 20.07.2006, at about 8:00 a.m. the daughter of the appellants/claimants Km. Arpita Verma, aged about 11 years, was going to her school in school bus from Roja Gaon to Faizabad. On Faizabad - Lucknow Highway near Village Choti Barai Deodi, Police Station Raunahi, a truck bearing No. HR 38 K 9895 which was being driven by its driver rashly and negligently hit the bus in which the daughter of the claimants was traveling from behind due to which she sustained grievous injuries. She was first admitted to District Hospital Faizabad from there she was shifted to Lucknow Medical College where she succumbed to her injuries.

3. The claimants filed a claim petition for compensation before the learned Motor Accident Claims Tribunal, Faizabad.

4. After appreciating the evidence led by the parties, the learned Tribunal came to the conclusion that the said truck was driven rashly and negligently by its driver as such the claimants were entitled for compensation and the learned Tribunal granted a sum of Rs. 90,000/- (Rupees Ninety Thousand only) as compensation along with other expenses for funeral, loss of estate and love and affection etc. The truck being insured with the National Insurance Company the liability to pay the compensation was fastened upon the Insurance Company.

5. Aggrieved by the said award this appeal has been filed for enhancement of compensation.

6. We have heard the learned counsel for the parties and perused the record.

7. The learned counsel for the appellants at the very outset has argued that the learned Tribunal has erred in granting lump-sum compensation whereas a multiplier method as envisaged under the Schedule of Section 163-A of the Motor Vehicles Act should have been applied and the rate of interest fixed 6% per annum was also on a lower side, whereas on behalf of the learned counsel for the National Insurance Company Ltd. it has been stated that the compensation granted by the learned Tribunal is in accordance with law then prevailing and learned Tribunal has rightly held that it is very difficult in cases of children to assess the compensation and the learned Tribunal has rightly granted a lump-sum compensation.

8. The learned counsel for the appellants has placed reliance on a case law R.K. Malik and Another Vs. Kiran Pal and Others, As per the facts of the said case the school going children were traveling in a school bus and when this bus was proceeding towards the school the bus after overrunning the road, breaking the railing got drowned in Yamuna river, consequent to this accident 29 children had died. When claims were filed before the learned Tribunal, the learned Tribunal by on its own award awarded a sum of Rs. 1,55,000/- to the dependents of children between age of 10 to 15 years and Rs. 1,65,000/- to the dependents of children between the age of 15 to 18 years. This apart, in respect of some other children different sums were granted. When the matter went before the High Court, the High Court by its common order held that the appellants were entitled to enhancement of compensation in all the cases by Rs. 75,000/- along with interest @ 7.5 % per annum. Then the matter went up to the Hon''ble Supreme Court. Hon''ble Supreme Court, amongst so many case laws, relied upon the case law of Lata Wadhwa and Others Vs. State of Bihar and Others, and held as under:-

"15. The real problem that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. However, under no stretch of imagination it can be said that the parents, who are appellants herein, have not suffered any pecuniary loss. In fact, Loss of dependency by its very nature is awarded for prospective or future loss. In this context, Lord Atkinson aptly observed in Taff Vale Rly Co. Vs. Jenkins, (1911-13) All England Reporter 160 as follows:

"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."

16. Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grand parents etc. in the case of non-working student? Under the Second Schedule of the Act in case of a non-earning person, his income is notionally estimated at Rs. 15,000/- per annum. The Second Schedule is applicable to claim petitions filed under Section 163-A of the Act. The Second Schedule provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable under Section 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases [see Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, ; United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan and Others Etc. Etc., and U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others,].

17. Reverting back to the factual position of the present case, the date of accident is 18th November, 1997. Prior to this, the Second Schedule of the Act was already introduced w.e.f. 14th November, 1994. Thus, the notional income mentioned in the Second Schedule and the multiplier specified therein can form the basis for the pecuniary compensation for the loss of dependency in the present case. No fact and reason was highlighted during the arguments why the Second Schedule should not apply in the present cases. The Second Schedule also provides for deduction of 1/3rd consideration towards expenses; which the victim would have incurred on himself if he had lived. As compensation for loss of dependency is to be calculated on the basis of notional income because the deceased was a child. It by necessary implication taken into account future prospects, inflation, price rise etc.

18. Therefore, keeping in view of Second Schedule of the Act this Court do not see any reason to differ with the views taken by the Tribunal as well as the High Court in so far as award of pecuniary compensation to the dependents/claimants is concerned. We must point out here that the learned Counsel for the appellants had argued that the notional sum of Rs. 15,000/- should be enhanced and increased as the Legislature has not amended the Second Schedule and the same continues to be in existence, since, it was enacted on 14th November, 1994. We are not examining and going into this aspect as the accident had taken place in the present case nearly three years after the enactment of the Second

Schedule. The time difference between the date of the enactment and the date of accident is not substantial."

9. The Hon''ble Supreme Court further held in paragraph 27 and 28 of the judgement as under:-

"27. In the case of Lata Wadhwa (supra), wherein several persons including children lost their lives in 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 Wadhwa case (supra), wherein the accident took place on 3rd March, 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 lakhs 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 lacs 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 recommended by Justice Y.V. Chandrachud Committee. This was in view of the fact that the company in question had an un-written rule that every employee can get one of his children employed in the said company."

10. At the last, after summing up the case, the Hon''ble Supreme Court came to the conclusion that "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 further noticed that the High Court in present case has enhanced the compensation in this category by Rs. 75,000/-. We do not find any infirmity in that regard."

11. In sum and substance, the Hon''ble Apex Court had approved the Judgment of the High Court. On the basis of this case law, the learned counsel for the appellants has pressed his appeal for enhancement of compensation.

12. Encountering the arguments, the learned counsel for the Insurance Company, Sri R.C. Sharma, Advocate has placed reliance on a case reported in

Puttamma and Others Vs. K.L. Narayana Reddy and Another, . In the said case law the Hon''ble Apex Court has considered the Second Schedule in view of Section 163-A(3) of the Motor Vehicles Act and has held in paragraph 56 as under:-

"56. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163-A(3) , but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of Act, 1988 or amendments made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163A of the Act, 1988."

13. In Puttamma''s case (supra) the Hon''ble Apex Court has held that till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of Section 163A of the Act, a person more than 5 years of age should be entitled for a fixed compensation of Rs. 1,50,000/-. The amount may be determined in terms of the Second Schedule whichever is higher.

14. We have considered both the case laws, one cited on behalf of the appellants and the other on behalf of the learned counsel for the National Insurance Company. To our view, since the case law cited on behalf of the National Insurance Company is of 2014 and is latest in time, shall prevail. To our view, as per the case of Puttamma (supra) the appellants are entitled for a compensation of Rs. 1,50,000/-. So far as the rate of interest is concerned, in the case of R.K. Malik (supra) the High Court has granted rate of interest as 7.5% per annum from the date of filing of the claim petition till the date of payment, this appears reasonable rate of interest in the present case as well.

15. So, we accordingly modify the award and we grant compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand only) along with the interest at the rate of 7.5 % per annum from the date of filing of the petition till the date of payment. The compensation granted by the Tribunal in other heads shall remain the same. The appeal is partly allowed and the award is modified accordingly.