**(2008) 06 KAR CK 0027**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 6340 of 2005

R. Narasimha Murthy and Another APPELLANT

Vs

M.N. Nagaraju and Another RESPONDENT

**Date of Decision :** 03-06-2008

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 168

**Citation :** (2009) 1 KarLJ 430 : (2008) 4 KCCR 2407

**Hon'ble Judges :** Manjula Chellur, J;K.N. Keshavanarayana, J

**Bench :** Division Bench

**Advocate :** A.S. Shiva Reddy and P.V. Kalpana, for the Appellant; M.S. Sriram, for Respondent-2, for the Respondent

## Judgement

1. Heard the learned Counsel for the appellants and the respondents. The matter is disposed of on merits by consent of both the Counsels at the stage of admission.

2. So far as occurrence of the accident on 1-2-2003 at about 4.45 p.m. involving the son of the appellants namely Goutham who was proceeding on the scooter of his father on Magadi Main Road, is not in dispute. It is also not in dispute that the driver of the oil tanker had dashed against the said scooter causing the fatal accident, thereby the appellants lost their only son who was aged about 4 years. So far as the rash and negligent driving by the driver of the oil tanker, though the Tribunal has referred to the judgment in the case of Kumari Sneha Vs. National Insurance Company Limited, Krishnagiri, Tamil Nadu and Another, the law laid down in the said case may not be strictly applicable, as it was a case where the child was a pedestrian crossing the road and held that the child in a way contributed for the occurrence of the accident. Therefore, it could be only contributory negligence of the father on whose scooter the child was travelling at the time of the accident. However, the finding of the Tribunal that the driver of the offending vehicle was responsible for the accident having become final, in view of the fact that the same was not challenged we need not go into the said

issue in detail. The fact remains a criminal case came to be registered against the driver of the oil tanker, which ultimately ended in filing of a charge-sheet against him after investigation.

3. Then, coming to the quantum of compensation, the appellants who are the parents of the deceased Goutham are before us seeking enhancement. The Tribunal based on the decision in the case of North West Karnataka Road Transport Corporation Vs. Rafiq Moulasab Bagawan and Another, , granted Rs. 90,000/- as compensation under the head loss of dependency and under other conventional heads, Rs. 30,000/- came to be awarded. In all Rs. 1,20,000/- was awarded by the Tribunal. The appellants not being satisfied with the quantum of compensation awarded by the Tribunal are before us.

4. According to the learned Counsel for the appellants, the appellants having lost their only child have to lead the rest of their life without the company of the their child. Therefore, the quantum of compensation awarded by the Tribunal is too low according to her. She relied upon the judgment of the Apex Court in the case of New India Assurance Co. Ltd. Vs. Satender and Others, , to substantiate her contention. This was a case where a child of 9 years by name Anuj was knocked down by a Truck and the Tribunal though referred to Second Schedule of the Motor Vehicles Act, 1988, felt it was too low and fixed the notional income at Rs. 30,000/-. In all, a compensation of Rs. 3,40,000/- was awarded towards financial loss to the parents, apart from Rs. 1,00,000/- towards loss of love and affection and Rs. 5,000/- towards funeral expenses. In the appeal before the Delhi High Court, the appeal came to be dismissed and the matter was taken before the Apex Court. The Apex Court after referring to several judgments in particular, the judgment in the case of State of Haryana and Another Vs. Jasbir Kaur and Others, , held that though it would be impossible for fixing any compensation for the loss of love and affection of the child, the assessment should not be unrealistic and Courts should not lose the track of reality of life. At para 7 of Jasbir Kaur''s case, it is stated as follows. -

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 the 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 the 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 fairness, equitability and reasonableness and non-arbitrariness. If it is not so it cannot be just.

5. Ultimately, in 2003, the concept of damages as provided u/s 168 of the Act being based on underlying principle of just and reasonable compensation, the Apex Court in 2007 in the case of Satender, having regard to the facts of the said case, awarded Rs. 1,80,000/- with interest at 7.5% p.a. being just and reasonable compensation. Looking at this judgment and the facts, which persuaded the Apex Court to come to that conclusion, we notice no golden scales or set of calculation or procedure to arrive at the said conclusion was laid down by their Lordships. On the other hand, the entire case was discussed based on the principle of just and reasonable. Therefore, we cannot lose sight of the reality of life. A four years old boy, who was studying in Nursery, died in the accident. Loss of a child to the parents definitely cannot be compensated with any amount of compensation. However, there has to be realistic approach as we are dealing with the public money while awarding compensation. Hence, each case has to be assessed with reference to the facts and circumstances available on record keeping in mind the dicta by the Apex Court from time to time in that direction. In view of the above discussion and reasoning, having regard to the fact that the child had not crossed the age of uncertainties of life and in the light of the fact that no one can definitely with certainly foresee the achievement of him in education i.e., how he would have pursued his education, how good he would have been a moral support to his parents being uncertain, we are of the opinion, just and reasonable compensation in the present case would Rs. 1,50,000/- in all, towards the loss of a child of four years. Having regard to the grief and the misery to be suffered throughout their life by the parents, we feel there is no need to interfere with the rate of interest awarded by the Tribunal.

6. Accordingly, the appeal is allowed in part with costs awarding Rs. 1,50,000/- as compensation as against the award of Rs. 1,20,000/- together with interest at 8% p.a. from the date of petition till deposit. The respondent insurer shall deposit the above amount within eight weeks from the date of receipt of the copy of the order.