(2009) 01 AHC CK 0055

In the Allahabad High Court

Case No : First. A. From. O. No. 532 of 2003

Ram Ji Sahu & Ors. APPELLANT

Vs

U.P.State Road Transport Corporation & Ors. RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2009) 01 AHC CK 0055

Hon'ble Judges : Devi Prasad Singh, J and Satish Chandra, J

Final Decision : Allowed

Judgement

Dr. Satish Chandra, J.—Heard Sri Rajnish Kumar Srivastava, learned counsel for the appellants, Sri Akhter Abbas, learned counsel for the respondent No. 1, Sri Munawar Sultan, learned counsel for the respondent No. 2 and Sri J. N. Mishra learned counsel for the respondent No. 3.

Present appeal has been preferred by the appellants under section 173 of the Motor Vehicle Act 1988, against the judgment and award dated 1062003, passed by Motor Accident Claims Tribunal, Lucknow in Claim Petition No. Ill of 1998 (Ram Ji Sahu and Others v. U. P. State Road Transport Corporation & Others).

2. The matrix of the case is that on 1261998, the claimants Nos. 2 & 3 were going from Lucknow to Kanpur along with Master Nimish Sahu and Km. Anchal Sahu in a Bus No. U. P. 78 / T 0432 operated by the U. P. State Road Transport Corporation. When the bus reached near Nawabganj (District Unnao), it colluded with Truck No. U. P. 32 T 8564 near Kaluanala. The collusion had occurred due to negligence and rash driving of both the drivers. Master Nimish Sahu and Km. Anchal Sahu who are aged about 11 & 6 years respectively have died in this accident. Both the children were the students of City Montessori School, Lucknow.

3. The claimants Nos. 3 and 4 Smt. Vijay Laxmi Sahu and, Km. Reetika had received serious injuries in this accident. It was observed by the Tribunal, after examining the entire evidence, that the Truck was coming from opposite

direction. The driver of the Bus also lost the control over it due to some technical fault. So, both the drivers were equally responsible. The Tribunal observed that this is a case of contributory negligence where two budding children have died and several other persons had received injuries including the claimant Nos. 3 & 4.

4. It was also observed that the Truck was insured with the New India Assurance Company Limited, Lucknow (respondent No. 3) and the insurance policy was valid from 2621998 to 2521999. The accident took place on 1261998 at about 3.00 pm. Further, it was determined that the Truck was being driven by Sri Ateeque at the time of accident and he was holding a valid and effective driving license to drive the Truck. The bus driver was also holding a valid and effective license as he was regularly driving the bus of the U. P. State Road Transport Corporation.

5. In these circumstances, the Tribunal, after examining the entire evidence, has awarded the compensation of Rs. 35,000/ & Rs. 30,000/ for sustaining the injuries to Smt. Vijaiy Laxmi and Km. Ritika, the claimant Nos. 3 & 4. The Tribunal further awarded compensation of Rs. 75,000/ & Rs. 50,000/ respectively for the death of Master Nimish Sahu and Km. Anchal Sahu. The interest was also awarded @9% from the date of award by the Motor Accident Claim Tribunal, Lucknow. Not being satisfied with the quantum of award, the claimants appellants have filed the present appeal.

6. During the course of arguments, both the parties have agreed regarding the facts mentioned in the Tribunals order. The main dispute is regrading the quantum of compensation.

7. The learned counsel for the appellants has submitted that the Second Schedule of the Motor Vehicles Act suffers ambiguities. The Courts and Tribunals cannot go by the ready reckoner, it can only be used as a guide. Selection of multiplier cannot be solely dependent on the age of the deceased as per the ratio laid down in the case of U.P.S.R.T.C, and Others v. Trilok Chandra and others (1996) 4 SCC 362.

Learned counsel for the appellant also stated that the compensation awarded by the Tribunal is meagre one. For this purpose, he relied on the ratio laid down in the case of Kaushalya Devi v. Sri Karan Arora 2007 (3) TAC 16 : (AIR 2007 SC 1912)(SC); and New India Assurance Company v. Padam Singh 2007 (4) TAC 388 : ((2008) 1 All LJ 7)(All) where under the Motor Vehicles Act, the claim was increased by treating the same as the social welfare legislation. Learned counsel further relied on the case of Jeewanlal Limited and others v. Appellate Authority 1984 (4) SCC 356 : (AIR 1984 SC 1842)where it was observed that:

"The Court should adopt a beneficent rule of construction; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the person in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words, of the statute speak the intention of the legislature. When the language is explicit, its consequence are for the Legislature and not for the Courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the Courts must not yield to the temptation of seeking ambiguity when there is none.

8. Further, he relied on the ratio laid down in the case of Lata Wadhwa and others v. State of Bihar and others 2002(1) T.A.C. 138: (AIR 2001 SC 3218) (S.C.) where the claim was awarded on higher side. Lastly, he made a request that the compensation may be enhanced, as demanded in the Claim Petition.

9. On the other hand, the learned counsel for the Respondent No. 3 (New India Assurance Company, Lucknow) has submitted that the compensation was rightly awarded by the Tribunal. He also relied on the ratio laid down in the case of Lata Wadhaw (supra). He further submitted that the Hon''ble Supreme Court in the case of Oriental Insurance Company Limited v. Syed Ibrahim & others AIR 2008 SC 103 has also discussed the similar issue. In that case, the quantum was increased by the High Court but Hon''ble Supreme Court has reduced the compensation and uphold the amount, which was awarded by the Tribunal. So he made a request that the compensation need not be enhanced. He also relied on the ratio laid down in the case of Kaushalya Devi : (AIR 2007 SC 1912)(supra) where the claim of the enhancement was rejected by following the ratio laid down in the case of Lata Wadhwa''s case (supra). In this case Hon''ble Supreme Court has observed that:

"In cases of young children of tender age, in view of the uncertainties around, 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."

Lastly, he justified the order of the learned Tribunal.

We have heard learned counsel for the parties at length and gone through the material available on record.

10. India is one of the countries with the highest number of road accidents. Motor accidents are everyday affairs. A large number of claims for compensation for injury caused by road accidents are pending in various Motor Accident Claims Tribunal. In a fatal accident, the dependents of the deceased are entitled to compensation for the loss suffered by them on account of the death. The most commonly practiced method of assessing the loss suffered is to calculate the loss

for a year and then to capitalize the amount by a suitable multiplier. To that is added the loss suffered on account of loss of expectation of life and the like. The Tribunals and High Courts have adopted divergent methods to determine the suitable multiplier. Even this Court has not been uniform; may be because the principle on which this method came to be evolved has been forgotten. It has, therefore, become necessary to examine the law and to state the correct principles to be adopted.

11. It is true that perfect compensation is hardly possible and money cannot renew a physique frame that has been battered and shattered, as stated by Lord Merris in West v. Shepard (1964 AC 326). Justice requires that it should be equal in value, although not alike in kind. Object of providing compensation is to place claimant as far as possible in the same position financially as he was before accident. Broadly speaking, in the case of death basis of compensation is loss of pecuniary benefits to the dependants of the deceased which includes pecuniary loss, expenses, etc. and loss to the estate. Object is to mitigate hardship that has been caused to the legal representatives due to sudden demise of the deceased in the accident. Compensation awarded should not be inadequate and should neither be unreasonable, excessive, nor deficient. There can be no exact uniform rule for measuring value of human life and measure of damage cannot be arrived at by precise mathematical calculation; but amount recoverable depends on broad facts and circumstances of each case. It should neither be punitive against whom claim is decreed nor it should be a source of profit of the person in whose favour it is awarded. Upjohn L. J. in Charter House Credit v. Jolly (1963) 2 CB 683) remarked, ''the assessment of damages has never been an exact science; it is essentially practical''.

12. The damages for vehicular accidents are in the nature of compensation in money for loss of any kind caused to any person. In case of personal injury the position is different from loss of property. In the later case there is possibility of repairer restoration. But in the case of personal injury, the possibility of repair or restoration is practically nonexistent. In Parry v. Cleaver (1969 1 AII.E.R. 555) Lord Morris stated as follows:

"To compensate in money for pain and for physical consequences is invariably difficult, but.....no other process can be devised than that of making monetary assessment."

13. The main principles of law on compensation for injuries were worked out in 19th Century, where railways accidents were becoming common and all actions were tried by Jury. Though the cases have antiquated air it is still useful to refer to them. The necessity that damages should be ''full'' and ''adequate'' was stressed by the Court by Queen''s Bench in Fair v. London and NorthWestern Railway Co. (1869) 21 LT 326). The word ''compensation'' is derived from Latin word "compensare" meaning "weigh together" or "balance". In Rushton v. National Coal Board (1953) 1 All. E.R. 314 it was observed:

"Every member of this Court is anxious to do all he can do to ensure that the damages are adequate for the injuries suffered, so far as they can be compensated for an injury, and to help the parties and others to arrive at a fair and just figure."

14. It has to be kept in view that the Tribunal constituted under the Motor Vehicles Act 1988 is required to make an award determining the amount of compensation which appears to be ''just''. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance to the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for the mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time, it has to be borne in mind that the compensation is not expected to be a wind fall for the victim.

15. Statutory provisions clearly indicate 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 on 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 nonarbitrary. If it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191).

16. The Hon''ble Supreme Court in the case of R. D. Hattangadi v. Pest Control (India) Pvt. Ltd. (AIR 1995 SC 755) laying the principles posited:

"Broadly speaking, while fixing the amount of compensation payable to a victim of an accident the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas nonpecuniary damages are those which are capable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as nonpecuniary'' damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

17. In the instant case, regarding the claim of claimants, the Tribunal has awarded a sum of Rs. 35000/ & Rs. 30,000/ respectively after examining the entire expenses pertaining to the treatment. As per second schedule of the Act, medical expenses can be awarded not exceeding Rs. 15,000/ but in the instant case, the claimants have submitted the medical bills, as per the details given in the Tribunal''s order.

Keeping in view the nature of the injuries of appellants Nos. 3 & 4 namely Smt. Vijay Laxmi Sahu and Km. Reetika and the physical pain and mental shock received by them and the money which had been spent on their treatment, the amount of Rs. 35,000/ & Rs. 30,000/ appears to be just proper and appropriate. Hence no interference is required in the Tribunal''s order in this regard.

18. Regarding the compensation pertaining to the death of the children, determination of the award is very difficult task for the reason that there are some aspects of the 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 starts, beyond the reach of monetary tapemeasure. The determinationof 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.

19. However, at the same time, the inspiration may be drawn from the observation made by the Hon''ble Apex Court in the case of G. M. Kerala SRTC v. Susamma Thomas (1994) 2 SCC 176: (AIR 1994 SC 1631) where culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above the reiterated that the multiplier method is the sound method of assessing compensation. The Hon''ble Court as observed that 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 a 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 consumedup over the period for which the dependency is expected to last.

20. It is rightly clarified that there should be no departure from the multiplier method on the ground that Motor Vehicles Act, 1988 envisaged payment of ''just'' compensation since the multiplier method is the accepted method for determining and ensuring payment of just compensation and is expected to bring uniformity and certainty of the awards made all over the country.

21. In the instant case, the ratio laid down in Lata Wadhwa''s case (AIR 2001 SC 3218) (supra) cannot apply for the reason that in that case compensation was awarded after an enquiry report submitted pertaining to fire in a pandal. That case was not related to an accident under Motor Vehicles Act, 1988. In the case in hand, the children were below the age of 15 years, therefore, as per Second Schedule (Section 163A) of the Motor Vehicles Act, upto the age of 15 years, the multiplier of 15 will have to apply. The victims were not having any source of income. Being nonearning persons, the notional income will have to be taken at Rs. 15,000/ per annum as per the Second Schedule of the Motor Vehicles Act. One third of the deemed income has to be deducted for expenses on self. Thus, for the purpose of computation of compensation, the notional income will have to be taken at Rs. 10,000/ per annum and the same will have to multiply as per multiplier of 15. Thus, it will come to Rs. 1,50,000/. If Rs. 2000/ as funeral expenses and Rs. 2500/ loss of estate are added, the total compensation comes to Rs. 1,54,500/ for each child. No discrimination can be made out between the male and female child.

22. Keeping in view the settled proposition of law, the claimants seem to be entitled for payment of compensation to the extent of Rs. 1,50,000/, for each child apart from the compensation payable in lieu of funeral expenses, and loss of estate etc. The total compensation which the claimants seem to be entitled to, comes to Rs. 1,54,500/. So far as interest is concerned, the claimants will be entitled for the interest @ 9% from the date of filing of the claim petition before the Tribunal as per the observation made by this Court in the case of United Insurance Company Ltd. v. Om Prakash Singh (FAFO No. 644 of 2005 dated 19122008).

In view of the above, the appeal is allowed in part. The compensation is assessed to the extent of Rs. 1,54,500/ for each child in the manner indicated hereinabove. The impugned award stands modified accordingly.

No order as to costs.

