
(2015) 02 CHH CK 0020
In the Chhattisgarh High Court
Case No : M.A. (C) No. 111 of 2014

Safari Bai Suryvansi and Others

APPELLANT

Vs

Ajay Ku. Patel and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A

Citation : (2015) 2 CGLJ 399

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Utkal Pradhan, for the Appellant

Final Decision : Partly Allowed

Judgement

Goutam Bhaduri, J.—The appeal is against the award dated 29th November, 2013 passed in Claim Case No. 127/2013 by the 6th Additional Motor Accident Claims Tribunal, Bilaspur wherein as against the claim of Rs. 7,35,000/- an award of Rs. 1,70,000/- was passed. Brief facts of the case as was pleaded by the claimants mother and father of the deceased Suraj Kumar was that on 6/07/2009 the deceased Suraj Kumar was travelling in a motorcycle as pillion rider along with Anil Kumar for his domestic work from Tifra to Ganiyari. When they reached near village Parsada, at that time truck bearing No. M.P. 19/H-2339 driven by respondent Ajay Kumar in a rash and negligent manner came from the opposite direction and dashed the motorcycle wherein deceased was travelling. Because of such impact of accident, deceased succumbed to the injuries. At the time of accident, the deceased was aged about 12 years and was a student. It was also stated that offending vehicle i.e. truck was insured with the New India Assurance Company Limited.

2. In reply the driver and the owner of the vehicle denied the accident and further stated that vehicle was insured with respondent No. 3 Insurance Company and at the time of accident, the driver of such was holding valid licence. It was also stated that at the relevant time no breach of policy was

committed by the respondents No. 1 and 2 and the insurance company was liable to make good the compensation.

3. The insurance company also denied the averments of claim petition and it was stated that at the relevant time vehicle was being driven without any permit or certificate of fitness, thereby breach of policy was committed. It was further stated that at the relevant time in motorcycle four persons were travelling and they themselves met with the accident and therefore claimants are not entitled for any relief.

4. Learned tribunal after evaluating the evidence on record has passed an award of Rs. 1,70,000/- in favour of the claimants. The instant appeal is by the claimants. No appeal has been preferred either by the insurance company or the driver and owner of the offending vehicle.

5. Learned counsel for the appellants submits that and placed his reliance in a case law in between Kishan Gopal and Another Vs. Lala and Others, (2013) 3 ACC 878 : (2013) ACJ 2594 : (2013) 9 AD 193 : (2013) 5 CTC 212 : (2013) 11 JT 563 : (2014) 1 PLR 276 : (2013) 4 RCR(Civil) 276 : (2013) 10 SCALE 580 : (2014) 1 SCC 244 and would submit that the notional income in respect of the persons aged between 10 to 15 years has been reconsidered and considering the value of rupees which has fallen drastically therefore the earlier proposition of notional income proposed in case of Lata Wadhwa and Others Vs. State of Bihar and Others, (2001) 2 ACC 316 : (2001) ACJ 1735 : AIR 2001 SC 3218 : (2001) 91 FLR 705 : (2001) 6 JT 431 : (2001) 2 LLJ 1559 : (2001) 5 SCALE 286 : (2001) 8 SCC 197 : (2001) AIRSCW 3086 : (2001) 6 Supreme 151 , was reconsidered to Rs. 30,000/- per annum for death of children of 10-15 years. He therefore in the similar line prays for enhancement of the compensation amount.

6. Learned counsel appearing for the insurance company supported the award and contended that award is well merited which do not call for any interference.

7. I have heard learned counsel for the parties at length and perused the documents and the record.

8. The instant appeal is by the claimants mother and father for death of their son Suraj Kumar who was aged 12 years. Since there is no appeal is preferred either by the owner and driver or by the insurance company, the finding arrived at by the learned tribunal that at the relevant time the vehicle was being driven in a rash and negligent manner and thereby it caused the accident is affirmed.

9. Now coming to the question of quantum. Learned tribunal has assessed the yearly income of the deceased to Rs. 15,000/- considering the age of the deceased.

10. On the earlier point of time the notional income of non-earning person was affixed to Rs. 15,000/- per annum as per Second Schedule to Section 163-A of Motor Vehicles Act as held in case of Lata Wadhwa and Others Vs. State of Bihar and Others, (2001) 2 ACC 316 : (2001) ACJ 1735 : AIR 2001 SC 3218 : (2001)

91 FLR 705 : (2001) 6 JT 431 : (2001) 2 LLJ 1559 : (2001) 5 SCALE 286 : (2001) 8 SCC 197 : (2001) AIRSCW 3086 : (2001) 6 Supreme 151 .

11. In the instant case age of the deceased was 12 years that is not in dispute.

12. Hon"ble Supreme Court in case of Kishan Gopal and Another Vs. Lala and Others, (2013) 3 ACC 878 : (2013) ACJ 2594 : (2013) 9 AD 193 : (2013) 5 CTC 212 : (2013) 11 JT 563 : (2014) 1 PLR 276 : (2013) 4 RCR(Civil) 276 : (2013) 10 SCALE 580 : (2014) 1 SCC 244 has occasion to reconsider the quantum and the multiplier which reads as under:--

"38. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa and Others Vs. State of Bihar and Others, (2001) 2 ACC 316 : (2001) ACJ 1735 : AIR 2001 SC 3218 : (2001) 91 FLR 705 : (2001) 6 JT 431 : (2001) 2 LLJ 1559 : (2001) 5 SCALE 286 : (2001) 8 SCC 197 : (2001) AIRSCW 3086 : (2001) 6 Supreme 151 with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years" old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs. 15,000/-. Further, the deceased boy, had he been alive would have certainly contributed Substantially to the family of the appellants by working hard.

39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs. 30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 the multiplier of 15 can be applied to the multiplicand. Further the Supreme Court has observed that under conventional heads towards loss of love and affection, funeral expenses, last rites principles laid down in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, (1994) ACJ 1 : AIR 1994 SC 1631 : (1994) 107 PLR 1 : (1993) 4 SCALE 643 : (1994) 2 SCC 176 , which is referred to in Lata Wadhwa and Others Vs. State of Bihar and Others, (2001) 2 ACC 316 : (2001) ACJ 1735 : AIR 2001 SC 3218 : (2001) 91 FLR 705 : (2001) 6 JT 431 : (2001) 2 LLJ 1559 : (2001) 5 SCALE 286 : (2001) 8 SCC 197 : (2001) AIRSCW 3086 : (2001) 6 Supreme 151 and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. Accordingly, under the conventional head for death of boy aged about 10-15 years, Rs. 50,000/- was awarded."

13. In the instant case claimants have stated that their son used to do job in their house and if such is quantified into amount it would have been about Rs.

3000/- per month. The law laid down in latest case of Kishan Gopal and Another Vs. Lala and Others, (2013) 3 ACC 878 : (2013) ACJ 2594 : (2013) 9 AD 193 : (2013) 5 CTC 212 : (2013) 11 JT 563 : (2014) 1 PLR 276 : (2013) 4 RCR(Civil) 276 : (2013) 10 SCALE 580 : (2014) 1 SCC 244 and the principles there in are applicable in full force in the instant case considering the facts and age of the deceased. In the instant case in hand age of the mother was 34 years and the age of the father was 39 years, therefore it would be just and reasonable to take notional income as has been held to Rs. 30,000/- and further taking the young age of the parents, the mother who was 34 years old and father who was 39 years old at the time of accident, by applying legal principle laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 multiplier of 15 can be applicable. Thus, $30,000 \times 15 = \text{Rs. } 4,50,000/-$ and Rs. 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, (1994) ACJ 1 : AIR 1994 SC 1631 : (1994) 107 PLR 1 : (1993) 4 SCALE 643 : (1994) 2 SCC 176 , is awarded considering age of children was 12 years at the time of death. Therefore, the quantum of compensation is assessed as under:--

14. After deducting Rs. 1,70,000/- awarded by the tribunal, the enhancement would be Rs. 3,30,000/-. In the result, the appeal is allowed in part. The total compensation of Rs. 1,70,000/- awarded by the tribunal is enhanced to Rs. 5,00,000/-. The claimants will be entitled to Rs. 3,30,000/- in addition to what is already awarded. The enhanced amount will carry interest @ 9% per annum from the date of filing of the claim petition till the date of realization.