(2008) 07 KAR CK 0024

In the Karnataka High Court

Case No : M.F.A. No. 1293 of 2006

Sesappa Poojary and Others — APPELLANT

Vs

P.K. Karunakara and Another — RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2009) ACJ 2516

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : K. Chandranath Ariga, S.M. Kalwad and Hanumantha Reddy Sahukar, for the Appellant; A.D. Vijaya and B. Pradeep for A.N. Krishnaswamy and B.C. Seetharama Rao, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—All these appeals are considered together having regard to common questions of law that are raised.

2. (a) In the appeal in M.F.A. No. 1293 of 2006, the appellants are the parents and minor sister of a deceased victim of a motor accident. The father was aged about 48 and the mother was aged 39 at the time of accident. The offending vehicle was a bus, belonging to the respondent No. 2. The deceased was aged about 13 and was studying in the 8th standard. While walking home after school hours, the bus had run over the boy and he died of the injuries. The appellants claimed a compensation of Rs. 4,00,000 before the Motor Accidents Claims Tribunal (hereinafter referred to as ''the Tribunal'' for brevity). To establish that the child was bright and healthy and was doing well in his studies, certificates issued by the school as regards his grades, extra-curricular and sports activities were produced.

(b) The Tribunal has, upon adjudication, proceeded to award a global compensation of Rs. 1,50,000. The Tribunal, in doing so, has relied upon the judgments in The Divisional Controller, B.T.S. Division, Karnataka State Road Transport Corporation Vs. Vidya Shindhe and Another, . The appellants seek enhancement of compensation. One of the grounds urged is that the mother of the deceased child had undergone an operation to prevent further childbirth and, therefore, she is incapable of having any more children and which aspect has been completely overlooked by the Tribunal.

3. (a) In the appeal in M.F.A. No. 1453 of 2007, the appellant is an insurance company which was the insurer of a vehicle involved in a motor accident. The parents of a victim, a boy aged about 16 at the time of the accident, had claimed compensation before the Motor Accidents Claims Tribunal. The same having been granted. The father of the boy was 39 and the mother was 35 at the time of the presentation of the claim petition. It transpires that while the deceased child was walking along the road with his friends, he was hit from behind by the offending vehicle and had succumbed to the injuries that he sustained.

(b) The parents claimed compensation before the Tribunal on the footing that he was a bright and healthy child who was receiving an annual scholarship of Rs. 600 from the first year of his schooling. It was also claimed that he was employed as a coolie after school hours and that he was earning Rs. 2,000 per month. There was material evidence placed on the record to establish that child was in fact, receiving a scholarship and that he had been awarded certificates of Talent Examination in Science for the years 2001, 2002 and 2003 and there were also certificates to indicate that he had participated in sports. A witness was also examined to state that he was employing the child after his school hours as a coolie.

(c) The Tribunal had accepted the evidence and has opined that the child had bright prospects in life and he was already earning about Rs. 2,000 per month and that within five years, he was capable of earning at least Rs. 3,000 and has proceeded to adopt a notional income of Rs. 24,000 per annum and ''16'' as multiplier, in arriving at the total compensation payable as being Rs. 3,96,000, including loss to the estate and loss of love and affection at Rs. 5,000 each and funeral expenses at Rs. 2,000. It is this which is under challenge.

(d) The appellant insurance company has contended that the adoption of the notional income at Rs. 3,000 was without basis. Further, that there ought to have been a deduction of 50 per cent of the notional income towards personal expenses of the deceased. And that the multiplier adopted ought to have been 13 instead of 16, having regard to the age of the younger of the parents.

4. In the appeal in M.F.A. No. 8823 of 2006, the insurer of the offending vehicle involved in the motor accident seeks to challenge the award in favour of the parents of the deceased. That as on 28.2.2005, a minor child of respondent Nos. 1 and 2, aged about 5 years, while playing outside their home, was run over by the vehicle insured by the appellant and he had succumbed to the injuries. The father, aged 26 and mother, aged 23, had claimed a compensation of Rs.

2,00,000 in respect of the death, Rs. 50,000 for mental shock and agony, Rs. 50,000 for love and affection and Rs. 25,000 towards funeral expenses, in all, a sum of Rs. 3,25,000. The Tribunal, in granting compensation, has adopted notional income of Rs. 15,000 per annum and has applied ''15'' as the multiplier and awarded a sum of Rs. 2,25,000 and Rs. 5,000 towards funeral expenses. The appellant has challenged the same on the ground that the Tribunal has failed to deduct one-third of the amount towards the personal expenses of the deceased and that the total compensation ought not to have exceeded Rs. 1,50,000 and that, therefore, the amount is excessive.

5. Counsel for the parties in all these appeals have argued at length and have drawn attention to various authorities to assert that the compensation awarded is excessive or conversely that it is inadequate. Having regard to the varying opinion expressed as to the quantum of compensation to be awarded in cases of death of minors in motor accident, it is found necessary to survey the principles governing the award of compensation in such cases before addressing the cases on hand.

6. In the case of C.K. Subramonia Iyer v. T. Kunhi Kuttan Nair 1970 ACJ 110 , involving the death of a boy, aged 8 years, who was killed in a motor accident in the year 1956 and wherein the court of first instance had found that deceased boy was a bright child and was at the top of his class and at the time of his death, he was in third standard. His parents were affluent. Hence, on the basis that they could have afforded him a good education, the court of first instance had granted Rs. 5,000 as damages under the Fatal Accidents Act, 1855. The High Court, in appeal, had determined the damages at Rs. 6,000. The Apex Court, after a review of the English and Indian case-law on the point, laid down that:

(a) There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations;

(b) The amount recoverable depends on the particular facts and circumstances of each case;

(c) The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor;

(d) As a general rule, parents are entitled to recover the present cash value of the prospective service of the deceased minor child;

(e) In addition the parents may receive compensation for the loss of pecuniary benefits reasonably to be expected after the child attains majority.

7. Applying the above rules to the case before the court, it was held that deceased child was only 8 years old at the time of his death. How he would have turned out in life later was, at best, a guess. But there was a reasonable probability of his becoming a successful man in life as he was a bright boy in school and his parents could have afforded him a good education. It was not

likely that he would have given any financial assistance to his parents till he was at least 20 years old. As was seen from the evidence on record, his father was a substantial person. He was engaged in business. As things stood, he would not need any assistance from his son. Further, as there was no material on record to find out how old the parents were at the time of death of the child nor there being any evidence about their state of health, the court felt that the damages ordered by the courts below was adequate.

8. In Andhra Pradesh State Road Trans. Corporation v. G. Ramanaiah 1988 ACJ 223 , on an extensive and painstaking review of the English and Indian cases on the point, the court has held as follows:

(28) From the aforesaid discussion the following principles can be stated:

(a) In the case of death of children, the parents can claim the present value of the future contributions which the deceased would have made to them. The dependency can be estimated by computing the annual contribution which the child would have made from the date of his probable earning. The question as to when a child would have reached such an earning capacity and as to what he could have contributed would depend on the facts of each case, the relevant factors being the child''s general level of intelligence or health, the family background, the father''s or family profession, if any, the capacity of the parents to educate the child, etc.

(b) After arriving at the annual contribution (or annual dependency) to the family, the multiplier that has to be applied is not the one appropriate to the age of the child at its death but to the age of the parents. This is because of the fact that the dependency to the parents will last only for the lifetime of the parents, who are likely to predecease the child (if the latter had not died in the accident). Of course, if the child is a grown-up person and married, the multiplier to be applied for arriving at the present value of the future loss to the wife, is the one appropriate to the age of the deceased because the wife, being younger, is normally likely to live up to or beyond the life of her husband.

(c) If the child is unmarried at the time of accident but likely to be married in course of time, the court cannot proceed on the basis that the contribution to the parents will be altogether stopped after such marriage. It may only be partially reduced. This is because of the statutory obligation in our country upon children to maintain their aged parents. In such cases, it is permissible to assess the contribution up to the possible date of marriage and later, separately.

(d) In the case of children above 5 years and below 10 years, it will not be possible to ascertain a suitable multiplier because of the fairly higher mortality rates in that period. But, it is permissible to arrive at conventional amounts, which may range up to Rs. 15,000 for accidents in the late seventies.

(e) In the case of children below 5 years (there are no decided cases of award of damages to the parents) a nominal amount up to Rs. 5,000 may perhaps be granted.

(29) This is in addition to the grant of other conventional amounts towards pain and suffering and loss of amenities for the short period between the time of accident and the time of death and for long expectation of life and this will be the award towards the loss to the estate.

(30) Before leaving this part of the discussion, I have to emphasise a certain difference between claims by parents in cases of death of children and cases of claims by injured children. It will be noticed that in cases of death of children, because the parents are older and the dependency will not last till the total expected period of life of the child, the multiplier is to be selected on the basis of the age of parents. But, in the case of injured children, the claim being not by the parents but by the child himself, there is no question of selecting the multiplier appropriate to the parents'' age. The multiplier appropriate to the age of the injured child at the date of trial will have to be selected.

(Emphasis added)

9. (a) Lata Wadhwa and Others Vs. State of Bihar and Others, has also offered certain guidelines as to the quantum of compensation that could be awarded in cases involving death of minors. It was a case decided by the Supreme Court on a writ petition under Article 32 of the Constitution of India. The facts leading up to the petition were that, on the celebration of the 150th Birth Anniversary of Sir Jamshedji Tata in the year 1989, within the factory premises of Tata Iron & Steel Co., a large number of employees, their families including small children had been invited. While the function was on, a fire is said to have broken out engulfing the pandal. By the time the fire could be extinguished, many died. The death toll reached 60 and total number of persons injured was 113. Amongst the dead were 26 children, 25 women and 9 men. Lata Wadhwa, the petitioner, had lost both her children, a boy and a girl and her parents. Her husband was an employee of the company. She along with others were, therefore, before the court seeking issuance of a writ of mandamus ordering of prosecution of the officers of the company for negligence and to direct that appropriate compensation be provided to the victims by the State Government as well as the company and sought protection, since it was apprehended that the company may use its influence to harass the petitioners and other relations who were victims.

9. (b) During the course of hearing, the senior advocate appearing for the company expressed that the respondent company does not wish to treat the petition as an adversarial one and that the matter was in the hands of the court for determining the monetary compensation payable. The court having found that the question of grant of compensation must be examined by a person having expertise, had requested Mr. Y.V. Chandrachud, former Chief Justice of India, to examine the matter and determine the compensation payable, by an order dated 15.12.1993. It was also indicated that in determining the compensation, principles indicated by Andhra Pradesh High Court in its decisions

in Chairman, Andhra Pradesh State Road Trans. Corporation v. Shafiya Khatoon 1985 ACJ 212 ; Bhagwandas Vs. Mohd. Arif, and Andhra Pradesh State Road Trans. Corporation v. G. Ramanaiah 1988 ACJ 223 , should be borne in mind. It was only in November 2000 that Mr. Chandrachud was able to submit his report quantifying the compensation payable. On the basis of the report, the Supreme Court has granted compensation. While dealing with the compensation payable to the parents of the deceased children, the Supreme Court has held as follows:

(11) So far as the award of compensation in case of children is concerned, Mr. Chandrachud has divided them into two groups, first group between the age group of 5 and 10 years and the second group between the age group of 10 and 15 years. In the case of children between the age group of 5 and 10 years, a uniform sum of Rs. 50,000 has been held to be payable by way of compensation, to which the conventional figure of Rs. 25,000 has been added and as such to the heirs of the 14 children, a consolidated sum of Rs. 75,000 each has been awarded. So far as the children in the age group of 10 to 15 years, there are 10 such children, who died on the fateful day and having found their contribution to the family at Rs. 12,000 per annum, multiplier of 11 has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs. 25,000 has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs. 1,57,000 each. In case of 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. This principle was laid down by the House of Lords in the famous case of Taff Vale Railway Co. v. Jenkins (1913) AC 1 and Lord Atkinson said thus:

...all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can, I think, be drawn from circumstances other than and different from them.

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonable expectation of pecuniary advantage is always a mixed question of fact and law. There are several decided cases on this point, providing the guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any materials on the reasonable expectation of pecuniary benefits which the parents expected. In case of a bright and healthy boy, his performances in the school, it would be easier for the authority to arrive at the compensation amount, which may be different from another sickly, unhealthy, rickety child and bad student, but as has been stated earlier, not an iota of material was produced before Mr. Chandrachud to enable him to arrive at just compensation in such cases and, therefore, he has determined the same on an approximation. Mr. Nariman, appearing for the TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well placed officials of Tata Iron & Steel Co. and on considering the submission of Mr. Nariman, we would direct that the compensation amount for the children between the age group of 5 and 10 years should be three times. In other words, it should be Rs. 1,50,000 to which the conventional figure of Rs. 50,000 should be added and thus the total amount in each case would be Rs. 2,00,000. So far as the children between the age group of 10 and 15 years, they are all students of class VI to class X and are children of employees of TISCO. TISCO itself has a tradition that every employee can get one of his children employed in the company. Having regard to these facts, in their case, contribution of Rs. 12,000 per annum appears to us to be on the lower side and in our considered opinion, the annual contribution should be Rs. 24,000 and instead of multiplier of 11, the appropriate multiplier would be 15. Therefore, the compensation so calculated on the aforesaid basis should be worked out to Rs. 3,60,000 to which an additional sum of Rs. 50,000 has to be added, thus making the total compensation payable at Rs. 4,10,000 for each of the claimants of the aforesaid deceased children.

(Emphasis supplied)

10. More recently, in Manju Devi v. Musafir Paswan 2005 ACJ 99 , which was a case of a 13 years old boy, who was killed in an accident in the year 1998, the Tribunal had awarded a fixed sum of Rs. 90,000 which it had held to be just, proper and reasonable. On an appeal for enhancement, the High Court had dismissed the same. The Apex Court in enhancing the compensation held as follows:

(2) In the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , it has been held by this Court that there should be no departure from the multiplier method on the ground that payment being made is just compensation. It has been held that the multiplier method must be accepted method for determining and ensuring payment of just compensation as it is the method which brings uniformity and certainty to awards made all over the country. In view of this authority, it will have to be held that the award of compensation had to be made by the multiplier method.

(3) As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy

of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs. 15,000 must be taken as the income. Thus, the compensation comes to Rs. 2,25,000.

(4) We accordingly modify the award to be in a sum of Rs. 2,25,000 with interest as awarded. The appeal stands disposed of accordingly. No order as to costs.

11. In New India Assurance Co. Ltd. Vs. Satender and Others, , the Apex Court was dealing with the case of a child aged 9 years, who was killed in a motor accident in the year 2002. The Tribunal had adopted a notional income of Rs. 30,000 per annum and after deducting one-third towards personal expenses, the financial dependency of the parents was taken at Rs. 20,000 per annum and considering the age of the parents, the multiplier of 17 was adopted. The total financial dependency was calculated at Rs. 3,40,000 and a sum of Rs. 1,00,000 was awarded for emotional loss and Rs. 5,000 for funeral expenses, a total sum of Rs. 4,45,000 was awarded with interest at 9 per cent per annum. An appeal to the High Court was dismissed and, therefore, the matter was before the Supreme Court. While taking note of the distinction made in Lata Wadhwa and Others Vs. State of Bihar and Others, , between the deceased children falling within the age group of 5 to 10 years and the age group of 10 to 15 years, it held that applying the principles indicated in State of Haryana and Another Vs. Jasbir Kaur and Others, , a sum of Rs. 1,80,000 would meet the ends of justice and that the same shall carry interest at the rate of 7.5 per cent per annum from the date of filing of the petition.

12. In Kaushlya Devi v. Karan Arora 2007 ACJ 1870 , which was a case arising on account of the death of the appellant''s son aged 14 years, as a result of a motor accident in the year 1997, a sum of Rs. 1,00,000 was awarded along with interest at 12 per cent per annum by the Motor Accidents Claims Tribunal. An appeal to the High Court was dismissed. The Supreme Court in appeal held that having regard to the principle that in cases of young children of tender age, in view of uncertainties neither their income at the time of death nor the prospects of future increase in their income are capable of proper determination on an estimated basis. Therefore, the financial loss projected by the parents is not capable of computation and dismissed the appeal.

13. This Court in S. Sana Ulla and Another Vs. A.R. Shivashankar and Others, , was dealing with a case involving the death of a 13 years old boy. The appellants were the claimants seeking enhancement of compensation. The Tribunal had awarded Rs. 1,51,500 with 8 per cent interest. On a comparative analysis of the compensation awarded to children between 10 and 15 years by the various High Courts and by Apex Court, in the case of Manju Devi v. Musafir Paswan 2005 ACJ 99 (SC), held that the various High Courts, following the judgment in Manju Devi''s case (supra) have consistently awarded Rs. 2,25,000 for the death of children aged between 10 and 15 years and that it would be appropriate if compensation is enhanced to Rs. 2,25,000 with interest at 6 per cent per annum.

14. On a study of the above cited cases, the following principles emerge:

(a) The amount of compensation recoverable in respect of death of a minor by the claimants in a petition u/s 166 of Motor Vehicles Act, 1988 depends upon the particular facts and circumstances-there can be no ceiling placed on the amount recoverable.

(b) Parents are entitled to recover as compensation the present cash value of the prospective service of the deceased minor child and reasonable compensation for the loss of present services [see (j) below].

(c) Compensation payable is towards loss of pecuniary benefits reasonably expected after the child attains majority. Dependency can be estimated by computing the annual contribution which the child would have made from the date of his probable earning, except as indicated in (j) below.

(d) Reasonable probability as regards the minor child growing into adulthood and being more successful than the parent (as it ought to be the expectation of every parent) and correspondingly working towards higher levels of income may be accepted if supported by material to indicate such a possibility with reasonable certainty. The older the child, less would be left to chance, as there is bound to be material to point to a strong possibility of the deceased child becoming a successful adult.

(e) As dependency lasts only for the lifetime of the parents, the multiplier to be applied is the one appropriate to the age of the younger of the parents.

(f) Dependency need not be deemed to cease on the marriage of the minor, though it may be reduced, having regard to the traditions and practices in this country.

(g) Dependency may vary given the social and economic condition of the family of the deceased. For example, an affluent parent is not likely to depend on the earnings of his child as would a less well-to-do parent.

(h) Deduction towards the personal expenses of the deceased cannot be uniformly taken at one-third or one-half, this will depend on the facts of the case.

(i) Nominal compensation has been awarded in the past in cases involving children above 5 years and below 10 years and so also in the case of children below 5 years. This need not be a rule for all time to come. With improved and assured basic health, educational and other needs becoming available to the general populace in greater numbers, by the year if not by the day, it is possible to award higher amounts of compensation even in respect of such cases and in view of the progressive increase in longevity, denial of compensation on the basis of mortality rates amongst very young children in the past decades, cannot be sustained.

(j) There are several decided cases where it has been observed that compensation cannot be granted to the parents in the event of death, due to accidents, of very young children for the reason that it would be many years before they actually become earning members. While on the other hand, the parents would in fact require to continue to spend money and effort for several years in nurturing the child to become a successful adult. But it has never been considered, in those decided cases, that money and effort has already been expended on the child even up to the date of death, which is lost. It is also not taken into consideration that even a very young child is capable of running errands and attending to chores for the parents even at a tender age. The loss of such services cannot be undermined. The loss in this regard needs to be compensated reasonably and well, depending on the facts and circumstances of the case.

15. Keeping the above principles and observations in view, I hold as follows:

In the appeal in M.F.A. No. 1293 of 2006, the deceased minor was aged about 13 at the time of accident. The appellants have merely claimed a compensation of Rs. 4,00,000. There is no material placed on record to indicate the social and financial background of appellants though there is an attempt to produce some material to indicate that the deceased child was doing well in studies. However, the contention that the mother had undergone an operation to prevent childbirth and that she was not capable of having any more children and that the deceased was the only son is a contention that has been completely overlooked by the Tribunal. The Tribunal having proceeded to award a lump sum amount of Rs. 1,50,000 is, therefore, not justified. The appellants are entitled to a larger amount of compensation. In the absence of evidence to indicate the income of the appellants and the probability of the child receiving higher education and earning large amounts of money, it is possible to compute the compensation payable only on the basis that the notional income would be about Rs. 15,000 per annum and if the age of the younger of the parents, namely, the mother, as on the date of the claim is taken, as she was 39 years old the appropriate multiplier would be 14 and if the same is applied, the appellants would be entitled to a loss of dependency of Rs. 1,40,000 (Rs. 15,000 x 1/3rd = Rs. 5,000) (Rs. 15,000 - Rs. 5,000 x 14). The appellants are entitled to compensation under conventional heads more particularly as the mother is no longer capable of bearing any child (which assertion is not disputed), the award of a sum of Rs. 1,00,000 is justified.

Accordingly, the appeal is allowed in part. Appellants are entitled to compensation of Rs. 2,40,000 with interest at 6 per cent per annum from the date of claim.

16. In the appeal in M.F.A. No. 1453 of 2007, the minor was aged 16 and there was material on record to show that the minor was doing well in school and was actively performing in sports and extra-curricular activities. There was material evidence also to indicate that the child was employed after school hours, as a coolie and it is on that basis that the Tribunal has adopted a notional income of Rs. 24,000 per annum for purposes of computation of compensation. The ground

in appeal to contend that the younger of the parents was 43 years old as on the date of the accident, is apparently incorrect. As on the date of the claim petition, the mother, who was the younger of the parents was aged 35 and hence, there is no error in the Tribunal having applied the multiplier of 16. The contention that the Tribunal ought to have deducted 50 per cent of the notional income towards the personal expenses of the deceased also cannot be sustained. The deduction of one-third by the Tribunal towards such deemed expenditure is in order. There is no warrant for interference. Appeal stands dismissed.

17. In the appeal in M.F.A. No. 8823 of 2006 the appellant insurer is justified in contending that deceased minor, who was aged 5 at the time of the accident belonged to parents aged 26 and 23. The material evidence on record did not indicate the avocation of the parents nor their income and the claim is also bereft of details. The Tribunal, however, has proceeded on the basis that the claimants could sustain the claim for compensation and that the notional income of the deceased minor could be taken at Rs. 15,000 per annum and has applied the multiplier of 15 and has awarded Rs. 2,25,000 as the loss of dependency, apart from funeral expenses. The appellant would be justified in contending that there ought to have been a deduction of one-third of the same as attributable towards personal expenses of the deceased, even assuming that the child grew into an adult and was capable of providing for his parents. Hence, if such deduction is given, the amount of compensation would stand reduced to Rs. 1,55,000. The appeal is, therefore, allowed in terms as above.

