

(2008) 07 DEL CK 0204

In the Delhi High Court

Case No : MAC App. No. 326 of 2004

Shri Kishore Kumar and Smt. Warsha

APPELLANT

Vs

Naresh Kumar, Ram Phal and The Oriental Insurance
Company Ltd.

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 168, 173

Citation : (2008) 07 DEL CK 0204

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Aruna Mehta, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—The present appeal u/s 173 of the Motor Vehicles Act, 1988 (for short as the "Act") has been filed against the award dated 29.01.04 passed by Sh. M.L. Mehta, Judge, Motor Accidents Claims Tribunal (for short as the "Tribunal"), Delhi wherein the Tribunal has awarded the compensation of Rs. 2,60,000/- along with the interest @ 9% from the date of filing of the petition for a period of 3 years.

2. Brief facts necessary for the disposal of this appeal are that deceased Nitin, died in a road accident which took place on 15th October 1997 at about 11 a.m. at Shastri Nagar, E-Block DTC bus stop. On the abovesaid date and time, the deceased along with his friend Sandeep, boarded the bus DL-IP-1177, route No. 816, from Shastri Nagar, Shiv Mandir to go to Delhi University, North Campus. The bus was fully packed and they were standing on the foot-board and were waiting to go inside. The bus was being driven by Naresh Kumar i.e. Respondent No. 1. At E-Block, Shastri Nagar bus stop, one bus bearing No. DL-IP-1167 plying on route No. 39 was already standing for taking passengers. Respondent No. 1, in order to take more passengers from the stop suddenly tried to overtake the stationary bus from the narrow space and in the process deceased came in

between the two buses and sustained fatal injuries on his head and chest. He became unconscious at the spot and was removed to Hindu Rao hospital, where he was declared brought dead.

3. The claim petition was filed by the Appellants/parents of the deceased, aged 45 and 40 years.

4. The reply to the Appeal has been filed on behalf of Respondent No. 1.

5. Respondent No. 3 i.e. the Insurance Company, in its reply has stated that it is clearly established on record that the financial and social status enjoyed by the Appellants was very ordinary standard. In the given situation, the deceased was taken to be non-earning person. The Tribunal has granted adequate and sufficient compensation.

6. On the other hand Respondent No. 2 did not appear inspite of service. On 20th March 2008, when the matter was taken up, nobody appeared on behalf of Respondent No. 3/Insurance Company and it was adjourned to 7th July 2008 for final disposal.

7. On 7th July 2008 again, none appeared on behalf of the Respondents.

8. Hence, arguments advanced by Ld. Counsel for the Appellant were heard.

9. It has been contended by the Ld. Counsel for Appellant that though the Tribunal appreciated the academic qualifications of the deceased yet it applied the Second Schedule of the Act and in the lump-sum figures, a sum of Rs. 1,00,000/- was added for future prospects which was an erroneous approach on the part of the Tribunal. The deceased was a brilliant boy having secured 76% in senior secondary examinations and at the time of his death was a student of 1st year, B. Com (Pass) in Shivaji College. Besides this, he was also doing a course in M.C.A from Aptech Institute.

10. The Apex Court had awarded a sum of Rs. 5,00,000/- where the students are brilliant like the deceased, which the Tribunal failed to consider the case. Further, the deceased would have expected a salary of Rs. 15,000/- to Rs. 20,000/- per month in the initial stage, which after the period of 5 to 7 years would have increased to Rs. 70,000/- to Rs. 80,000/- per month. Therefore, the Tribunal has erroneously taken the future prospects of the deceased and failed to grant just and reasonable compensation in the facts and circumstances of the case. The findings of the Tribunal that the deceased did not belong to a well placed family and father of the deceased was earning a meagre amount as the income of the father of the deceased was not brought on record are incorrect as the deceased was studying at a reputed private institution and the private institutions charge heavy fees for providing the degrees. Thus, to provide the education in college and side by side taking education from a private institute, the father must be having the income of Rs. 15,000/- to Rs. 20,000/- per month, which the Tribunal has failed to appreciate.

11. Ld. Counsel for the Appellant has relied upon the decisions of Gyanchand Jain and Anr. v. Parmanand and Ors. 2003 ACJ 2152 ; Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, ; Narender Singh, Joginder Singh, Dalal Singh and Sushila Devi Vs. Sudarshan Kumar (Deceased) through his legal heirs and Others, ; National Insurance Co. Ltd. Vs. Jai Prakash Tripathi and Another, ; H.S. Chetan (since deceased by his LRs. Leelavathi @ Leelamma and K. Sadashivaiah) Vs. Chandra Moull and National Insurance Co. Ltd., ; M.S. Grewal and Another Vs. Deep Chand Sood and Others, ; United India Insurance Co. Ltd. Vs. Chhaganlal Punamchand Jain, ; Lata Wadhwa and Others Vs. State of Bihar and Others, and Sh. Kishan Lal and Ors. v. Govt. Of NCT of Delhi and Ors. WP (C) No. 5072-73/2005.

12. Ex.PW3/2, the secondary school certificate of his secondary school examination of the deceased show his date of birth to be 24.09.79. Thus, the deceased was 18 years at the time of alleged accident. Ex.PW3/1 is the school certificate of his secondary school examination. Mark A-1 is the photocopy of the identity card of deceased as issued by Shivaji College. Marks A, B, & C are receipts as issued by Aptech Computer Education.

13. In M.S. Grewal (supra), cited by the Appellant Counsel the Apex Court has observed as under;

Be it placed on record that while assessing damages, all relevant materials should and ought always be placed before the court so as to enable the Court to come to a conclusion in the matter of affection of pecuniary benefit by reason of the unfortunate death. Though mathematical nicety is not required but a rough and ready estimate can be had from the records claiming damages since award of damages cannot be had without any material evidence: whereas one party is to be compensated, the other party is to compensate and as such there must always be some materials available therefore. It is not a fanciful item of compensation but it is on legitimate expectation of loss of pecuniary benefits. In Grand Trunk Railway Company of Canada v. Jennings 13 Ac 800, this well accepted principle stands reiterated as below:

In assessing the damages, all circumstances which may be legitimately pleaded in diminution of the damages must be considered. It is not a mere guesswork neither it is the resultant effect of a compassionate attitude.

As noticed above, a large number of decisions were placed before this Court as regards the quantum of compensation varying between 50,000 and Rs. 1,00,000 in regard to unfortunate deaths of young children. We do deem it fit to record that while judicial precedents undoubtedly have some relevance as regards the principles of law, but the quantum of assessment stands dependent on the fact-situation of the matter before the court, than judicial precedents. As regards the quantum no decision as such can be taken to be of binding precedent as such, since each case has to be dealt with on its own peculiar facts and thus compensation is also to be assessed on the basis thereof though, however, the

same can act as a guide: Placement in the society, financial status differ from person to person and as such assessment would also differ. The whole issue is to be judged on the basis of the fact-situation of the matter concerned though however, not on mathematical nicety.

14. In *Lata Wadhwa*(supra), cited by the Appellant Counsel the Apex Court on the acceptability of the multiplier method, has observed as under;

The multiplier method is logically sound and legally well established method of ensuring a "just" compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases.

The Court also further observed that the proper method of computation is the multiplier method and any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principles, lack of uniformity and an element of unpredictability for the assessment of compensation. The Court disapproved the contrary views taken by some of the High Courts and explained away the earlier view of the Apex Court on this point. After considering a series of English decisions, it was held 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 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 consumed up over the period for which the dependency is expected to last.

15. In *Sh. Kishan Lal* (supra), cited by the Appellant Counsel the Apex Court has observed as under;

The petitioner No. 1, Puran's father, was working in a market as a Security Guard and was earning approximately Rs 4,000/- per month. The late Puran, who was in the 3rd Standard, when he passed away, was an excellent student. In the previous academic year, he was ranked First in his class. Therefore, we can safely assume that Puran as an adult would have earned at least as much as his father, if not more. So, as evidenced by his academic skills, Puran's father's salary can be used as a starting base for calculating the compensation for pecuniary loss of dependency.

16. From the above cited judgments, it is clear that compensation of varying amounts in regard to unfortunate death of young children had been awarded depending upon the facts and circumstances of each case. As regard the quantum of compensation, no decision as such can be taken to be of binding precedents. Each case has to be dealt with on its own peculiar facts, depending upon the financial & social status of the family in society, environment in which the deceased was brought up, his academic career and health of the deceased

child and other relevant facts.

17. In *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , the Apex Court discussed the purpose of enacting the Act and referred to its earlier decision in *Sohan Lal Passi Vs. P. Sesh Reddy and others*, wherein it observed that;

10. The road accidents in India have touched a new height. In majority of cases because of the rash and negligent driving, innocent persons become victims of such accidents because of which their dependants in many cases are virtually on the streets. In this background, the question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. Traditionally, before the Court directed payment of tort compensation, it had to be established by the claimants that the accident was due to the fault of the person causing injury or damage. Now from different judicial pronouncements, it shall appear that even in western countries fault is being read and assumed as someone's negligence or carelessness. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, have introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident.

18. Under the provisions of the Act, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. But the only embargo is that it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence.

19. In this regard, the Apex Court also observed in *The Divisional Controller, KSRTC v. Mahadeva Shetty and Anr.* JT 2003 (6) SC 519, as under;

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 to it 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 with 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 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 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 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 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 equitability, fairness and reasonableness, and non-arbitrary. If it is not so, it cannot be just. (See *Helen C. Rebello v. Maharashtra State Road Transport Corporation and Anr.* 2 (1998) ACC 512)

20. In cases of motor accidents, the endeavour is to put the dependents/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is, therefore, required to be paid for prospective pecuniary loss, i.e. future loss of income/dependency suffered on account of the wrongful act.

21. In *New India Assurance Co. Ltd. Vs. Satender and Others*, , the Apex Court has observed as under;

In the case of death of an infant, there may have been no actual pecuniary benefit derived by the parents during the child's lifetime. But this will not necessarily bar the parent's claim and prospective loss will find 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 Rly. 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." (See *Lata Wadhwa and Others Vs. State of Bihar and Others*,)

22. Perusal of the award shows that the Tribunal has taken into consideration notional income of the deceased at Rs. 15,000/- p.a. as laid down in the Second Schedule of the Act since the deceased was not working. It is a settled legal

position that u/s 168 of the Act, the compensation to be awarded in favour of the claimants, should neither be excessive nor on the lower side, but the same should be just, fair and equitable. No amount of compensation can compensate the loss of a life or can bring back happiness in the lives of the dependant family members. It is a case of young boy of 18 years whose life was snatched in the gruesome accident at the threshold of his youth.

23. The difficulty that arises in the cases of death of non-working students is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. Yet it cannot be said that the dependants have not suffered any pecuniary loss. Loss of dependency by its very nature is awarded for prospective or future loss.

24. In *R.K. Malik and Others Vs. Kiran Pal and Others*, , this Court has observed as under;

Then, how does one calculate the pecuniary compensation for loss of future earnings and loss of dependency of the parents, grandparents etc., in the case of a non-working student. Under the Second Schedule to the Act in the case of non-earning person, his income is notionally estimated at Rs. 15,000/- per annum. The Second Schedule is applicable to the claim petitions u/s 163-A of the Act, on the basis of principle of strict liability. The Second Schedule also 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 u/s 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*,].

25. In *Manju Devi and Ors. Musafir Paswan and Ors.* 4 (2005) ACC 15, the Apex Court awarded compensation of Rs. 2,25,000/- on death of a boy aged 13 years in an accident. While doing so the Apex Court applied multiplier of 15 and since the deceased was a non earning person, it was held that Rs. 15,000/- must be taken as his notional income as mentioned in the Second Schedule of the Act.

26. In *New India Assurance Co. Ltd. v. Satender and Ors.* (supra), the Apex Court granted the compensation of Rs. 1,80,000/- on death of a child aged 9 years. The Apex Court has observed as under;

In *Mallett v. McMonagle* 1969 ACJ 312 , Lord Diplock analysed in detail the uncertainties which arise at various stages in making a rational estimate and practical ways of dealing with them. In *Davies v. Taylor* 1973 ACJ 66 , it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the necessity for compensating the real

loss. But a practical approach to the calculation of the damages has been stated by Lord Wright in *Davies v. Powell Duffryn Associated collieries Ltd.* (1942) 1 All ER 657, in the following words:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required to be spent for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase.

27. Applying the principles of law as discussed above, it would be seen that the deceased Nitin was a bright child having scored 76% marks in his XII standard examination and at the time of accident was a student of Ist year, B.Com(Pass) and also doing the computer course. Having regard to the uncertainties in regard to the academic pursuits, which is not possible to predict at such early stage and in his financial and social background, the Tribunal has rightly taken the income of the deceased at Rs. 15,000/- per annum as per Second Schedule. After deducting 1/3rd towards the personal expenses and applying the multiplier of 16, the Tribunal has rightly awarded the compensation of Rs. 1,60,000/-.

28. Further, there is no dispute with the proposition that future advancement in life and career of the deceased could form a valid factor or consideration for determination of his/her gross income as held by the Apex Court in a number of cases. But this was not to be done as a matter of course. Some proof is required to be furnished for this. In *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, , the Apex court has observed as under;

The mere assertion of the claimants that the deceased would have earned more than Rs. 8,000/- to Rs. 10,000/- per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before the MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income.

29. Traditionally, Courts in India have been recognizing that a child of tender age could not show his future propensities and prospective loss to the parents, therefore, it would be impossible to determine the reasonable expectation of pecuniary benefit if the child had lived. But, a child above 10 years could show his acumen. Keeping in view the fact that the deceased was a brilliant student and the claimants can be said to have good expectations from such a child, Rs. 1,00,000/- on account of future prospects has been rightly awarded by the tribunal.

30. Further, in all the judgments cited by the Ld. Counsel for Appellant, the future prospects of the deceased were not considered. On the other hand, in the present case, the Tribunal has already awarded Rs. 1,00,000/- on account of

future prospects which in my view is reasonable.

31. Thus, the award of Rs. 2,60,000/- with interest @ 9% for three years as given by the Tribunal is just, fair and equitable and there is no merits in the appeal. Hence, this appeal is dismissed.

32. No order as to costs.

33. Trial Court record be sent back.