

(2013) 01 GAU CK 0059
In the Gauhati High Court
Case No : MAC Appeal No. 100 of 2007

Smt. Puja Sarkar and Another	Vs	APPELLANT
The Oriental Insurance Co. Ltd. and Another		RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2014) 2 ACC 540 : (2013) 2 GLD 362

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : R. Datta, for the Appellant; Sankar Lodh, for the Respondent

Final Decision : Allowed

Judgement

S.C. Das, J.—For the death of Abhijit Sarkar, a minor boy aged about 12 years, in a motor vehicle accident, occurred on 04.02.2005 at about 12.45 P.M. (noon) at Kaman Chowmuhan, Agartala town, his parents Hrishikesh Sarkar (since deceased) and Dipali Sarkar, presented a petition u/s 166 of Motor Vehicles Act, 1988 (hereinafter for short the Act), which was registered as Case" No. T.S. (MAC) 110 of 2005 and the learned single Member, Motor Accident Claims Tribunal on inquiry and trial found the offending vehicle TR-01 B-1659 (Truck) as guilty of rash and negligent driving, resulting the accident causing severe injury on the head and other parts of the body of minor boy Abhijit, as a result of which, Abhijit succumbed to the injuries at the I.G.M. Hospital on the same day. The Tribunal awarded a compensation of Rs. 1,54,000/- (Rupees one lakh fifty-four thousand) in all to the claimant petitioners (parents) and directed respondent No. 1, Oriental Insurance Company Ltd. to make payment of the compensation. The petitioners were not happy with the quantum, so determined by the Tribunal and hence this appeal u/s 173 of the Act. Heard learned counsel, Mr. Ratan Datta for the appellants and learned counsel, Mr. Sankar Lodh for the respondent-Insurance Company, Respondent No. 2 (owner) of the offending vehicle has chosen to remain absent.

2. Learned counsel, Mr. Datta has submitted that the Tribunal adopted the provisions prescribed in the Second Schedule of the Act for determining compensation "since the deceased was a minor boy having no personal income. The Tribunal fixed his notional income at Rs. 15,000/- per annum as specified in item No. 6 of Second Schedule and determined the compensation applying the multiplier of 15 as prescribed in item No. 1 of the said Schedule. It is contended by learned counsel, Mr. Datta that there is nothing prescribed in item No. 6 for deduction of one- third from the amount ascertained, towards maintaining the child himself, since the child was absolutely dependent on his parents. He has also contended that the law laid down by the Apex Court in Case of Santosh Devi v. National Insurance Company Ltd., (Civil Appeal No. 3723 of 2012) should be applied in the case of the deceased and 30% increase in the total notional income should be fixed for determining compensation.

Learned counsel, Mr. Lodh, on the other hand, has that the accident occurred on 04.02.2005 and the, judgment passed by the Tribunal on 31.05.2007. At that point of time, neither the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, nor the case of Santosh Devi (supra) came into being and so, the Tribunal rightly calculated the compensation. Learned counsel very fairly contended that it is a debatable question as to whether one-third should be deducted or not while the compensation has been determined, taking into account notional income of the deceased, as prescribed in item No. 6 of the Motor Vehicles Act. According to learned counsel Mr. Lodh, since the multiplier has been applied as prescribed in item No. 1 of the second schedule, the Tribunal has followed the note added at the bottom of item No. 1 of the said schedule and deducted one-third onwards maintaining of deceased himself.

3. Admittedly, the deceased was a minor boy of 12 years and he had no income at all. He was an asset and/or estate of his parents. Obviously, he was dependent on his parents at the time of his death and since he had no personal income, according to law, his notional income was taken into account, as prescribed in Item No. 6 of the Second Schedule of M.V. Act.

For ready reference, we may reproduce here the contents of item No. 6 of the Second Schedule which reads thus:

6. Notional income for compensation to those who had no income prior to accident:

(a) Non-earning persons;

(b) Spouse.

In case of other injuries only "general damage" as applicable.

The Legislature at its wisdom did not give any note at the bottom of item No. 6 of the Second Schedule prescribing any deduction, whereas, at the bottom of item No. 1 of the said schedule the Legislature noted that one-third should be deducted towards maintaining himself. Since the deceased had no income of his

own there was no question of any deduction from the amount of compensation which was determined taking into account the notional income of the deceased. The Tribunal, as I find, deducted one-third from the amount ascertained, towards self- maintenance of deceased minor boy, which has no legal support and therefore, it is liable to be interfered by this Court in appeal.

In the case of Manju Devi and Another Vs. Musafir Paswan and Another the Hon"ble Supreme Court referring to its previous judgment in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, awarded compensation of Rs. 2,25,000/- in respect of death of a 13 year old boy by applying multiplier of 15 and taking the notional income of Rs. 15,000/- as per the Second Schedule of the M.V. Act.

The relevant portion of the judgment is reproduced thus:

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/-.

Relying on Manju Devi (supra) the Rajasthan High Court in the case of Sobhagya Devi and Others Vs. Sukhvir Singh and Others, has awarded Rs. 2,25,000/- in the case of death of a 12 year old boy.

In the case of Shyam Narayan Vs. Kitty Tours Travels and Others, the High Court of Delhi in the case of death of a child aged about 5 years, relying on the Apex Court's Judgment in Manju Devi (supra) awarded compensation to the parents by applying the notional income of Rs. 15,000/- and a multiplier of 15 as per the Second Schedule and also awarded further compensation of Rs. 50,000/- for loss of companion of the child as well as for pain and sufferings etc.

The decision in Manju Devi (supra) still stands good and is to be followed by all subordinate Courts in the Country. Therefore, deduction of one-third from the amount of compensation, determined by the Tribunal, towards self- maintenance of the deceased minor boy is found to be contrary to the law laid down by the Apex Court in the Manju Devi (supra) and hence cannot legally sustain.

4. The next argument advanced by learned counsel, Mr. Datta is for 30% increase in the notional income in determining the compensation. In the case of Sarala Verma (supra) as well as Santosh Devi (supra) it has been categorically made clear that the increase in the income is applicable only in cases of an earning member. In Sarala Verma (supra) the Apex Court has directed the increase in the cases of Government servants or the employees under the Government agencies or the instrumentalities. In the case of Santosh Devi (supra) the Apex Court further extended the scope to the extent of 30% increase to self-employed as well as employees of fixed wages. The law, laid down by the Apex Court, is very clear that the principles enunciated in those judgments shall apply only in the cases of death of a person engaged in a definite source of

income at the time of accidental death. Those case laws cannot be applied in the case of death of a child who was dependent on his parents. This argument, therefore, has no merit at all for consideration. The appellants are not entitled to any enhanced amount of 30% increase in the notional income of the deceased.

5. After carefully going through the impugned judgment, passed by the Tribunal, it appears that the Tribunal did not award any compensation to the claimants towards non-pecuniary damages. This aspect has been particularly considered by the Apex Court in the case of *R.K. Malik and Another Vs. Kiran Pal and Others*, In that reported case 29 children died in an accident of a school bus which fell in river Yamuna. Compensation was claimed for the death of those children and the award made by the Tribunal was challenged before the Delhi High Court and the High Court determined the compensation as per Second Schedule of the M.V. Act taking into account the notional income and the multiplier of 15. In respect of non-pecuniary damages, the High Court observed that loss of dependency of life and pain and suffering is same and uniform to all regardless of status unless there is a specific case comes out for deviation. The High Court awarded Rs. 75,000/- towards non-pecuniary compensation. The award made by the High Court was challenged before the Hon'ble Supreme Court. The Supreme Court following its earlier judgments in the case of *Lata Wadhwa and Others Vs. State of Bihar and Others*, *Common Cause, A Registered Society Vs. Union of India and Others*, *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, *Smt. Sarla Dixit and another Vs. Balwant Yadav and others*, *R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others*, and *State of Haryana and Another Vs. Jasbir Kaur and Others*, has held that for such death of a school going child the claimants were entitled to get non-pecuniary damages towards dependency of life, pain and suffering etc. as well as future prospect of child.

The Court in Paras 35 to 40 held thus:

35. In the present case, records shows that the children, were in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future.

36. In the case of *Lata Wadhwa (supra)* and *M.S. Grewal (supra)*, the Supreme Court recognised such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in *Lata Wadhwa (supra)* and *M.S. Grewal (supra)*, we deem it appropriate to grant compensation of Rs. 75,000/- (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify

that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

37. Besides, the Courts have been awarding compensation for pain and suffering and towards non-pecuniary damages. Reference in this regard can be made to R.D. Hattangadi case (supra). Further, the said compensation must be just and reasonable.

38. This Court has observed as follows in State of Haryana v. Jasbir Kaur, SCC at p. 7, Para 487:

487. 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 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, "just" denotes The expression equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.

39. So far as the pecuniary damage is concerned we are of the considered view both the Tribunal as well as the High Court has awarded the compensation on the basis of Second Schedule and relevant multiplier under the Act. However, we may notice here that as far as non-pecuniary damages are concerned, the Tribunal does not award any compensation under the head of non-pecuniary damages. However, in appeal the High Court has elaborately discussed this aspect of the matter and has awarded non-pecuniary damages of Rs. 75,000.

40. Needless to say, pecuniary damages seeks to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses. In contrast, non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. In this context, it becomes duty of the Court to award just

compensation for non-pecuniary loss. As already noted it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the Court must be to provide a just, fair and reasonable amount as compensation keeping in view all relevant facts and circumstances into consideration. We have noticed that the High Court in present case has enhanced the compensation in this category by Rs. 75,000/- in all connected appeals. We do not find any infirmity in that regard.

6. We may also gainfully refer here the observation of the Apex Court in the Case of R.D. Hattangadi (supra) wherein the Apex Court in Para-9 observed thus:

9. Broadly speaking while fixing an 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 is capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable 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 upto the date of trial;
- (iii) other material loss.

So far non-pecuniary 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.

7. In the case of Common Cause (supra) the Apex Court in Para 128 observed thus:

128. The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered.--The elements of damage recognized by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non- pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what Mc Gregor says, is generally more important than money it is the best that a Court can do. In Medianna Re Lord Halsbury L.C., observed as under:

How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident.... But nevertheless the law recognizes that as a topic upon which damages may be given.

8. In view of the discussions made above, so far the law settled by the Apex Court, for the death of the minor boy, in the case at hand, the parents are entitled to compensation for both pecuniary and non-pecuniary damages. There cannot be any deduction towards self-maintenance of the minor boy, the amount ascertained, applying multiplier method and notional income, as prescribed in Second Schedule of the Act.

In the present case nothing stated in the claim petition or in the deposition of the parents as to in which Class the deceased boy was reading at the time of his death. It is simply mentioned that he was a student and cricket player and some certificates in proof of is cricket playing were placed on record. Nothing put in evidence regarding future prospect of the deceased boy. The parents no doubt suffered severe pain and suffering for the death of the minor boy and considering all aspects an amount of Rs. 75,000/- (Rupees seventy five thousands) is awarded towards pain sufferings suffered by the parents of the deceased and towards future prospect of the boy a further amount of Rs. 25,000/- (Rupees twenty-five thousands) is awarded as compensation.

9. In view of the discussions made above towards pecuniary damages the petitioners are entitled to get Rs. 2,25,000/- (Rupees two lakh twenty-five thousands) as compensation. Further towards non-pecuniary damages the petitioners are entitled to get Rs. 1,00,000/- (Rupees one lakh) as compensation. In all they are entitled to get Rs. 3,25,000/- (Rupees three lakh twenty-five thousand) as compensation.

10. It is presumed that the amount awarded by the Tribunal has already been paid by the Insurance Company. The rest amount shall be paid with 6% simple interest thereon from the date of filing of the petition i.e. 26.02.2005 and the payment should be made within 60 (sixty) days from today failing which it shall carry interest @ 9% per annum.

11. A copy of this order be made available to the learned counsel of the appellants and the respondent-insurance company for compliance.

12. The judgment and award, passed by the Tribunal, to the extent stands modified. The appeal accordingly stands disposed of. Send back the L.C. records along with a copy of this judgment.