

(2013) 07 OHC CK 0057
In the Orissa High Court
Case No : MACA No. 149 of 2011

The Divisional Manager, Oriental Insurance Company, Ltd. APPELLANT
Vs
Chittaranjan Mallick and Others RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168

Citation : (2014) 1 ACC 921 : (2014) 1 AnWR 211 : (2013) 116 CLT 750 :
(2013) 2 OLR 407

Hon'ble Judges : A.K. Rath, J

Bench : Single Bench

Advocate : Mahitosh Sinha, P.R. Sinha and P.R. Mahali, for the Appellant; A.K. Mohanty and B. Rout for R-1 and 2, for the Respondent

Judgement

A.K. Rath, J.—This appeal by insurer is directed against the judgment/award dated 27.12.2010 passed by the learned Member, 3rd M.A.C.T., Bhubaneswar in MACT Case No. 267/220 of 2009-07 whereby and whereunder the learned tribunal awarded an amount of Rs. 2,56,000/- as compensation and directed the insurer to pay the same to the claimants along with simple interest @ 7% per annum from the date of filing of the claim petition i.e. 21.6.2007 till the date of payment. Facts, in very brief, are as follows:

On 27.05.2007 while the son of the claimants was returning to his home from Tangi-Patharabandha along with his grand parents in an auto rickshaw bearing registration No. OR 02 AL 0422, the left side rear tyre of the said auto rickshaw was burst, for which the same dashed against the backside of a gas tanker bearing registration No. HR 51 BA 0127, which was standing near a hotel at Lachanga Chawk. As a result of the said accident he succumbed to injuries on the spot. Thereafter the claimants filed an application u/s 166 of the Motor Vehicle Act, 1988 before the tribunal.

2. Pursuant to issuance of notice, opposite party No. 1, the owner of the offending vehicle entered appearance and filed a written statement denying the

liability. Opposite party No. 2, insurer of the auto rickshaw also filed a written statement denying the liability.

3. On the basis of the inter se pleadings of the parties, the learned tribunal struck three issues. To substantiate the case, the petitioners had examined one witness and on their behalf six documents were exhibited. Neither any witness was examined nor any document was exhibited by the opposite parties.

4. On a threadbare analysis of the evidence on record, both oral and documentary, and pleadings of the parties, the learned tribunal came to a conclusion that the accident occurred due to rash and negligent driving of the auto rickshaw. Having held so, the learned tribunal awarded an amount of Rs. 2,56,000/- (rupees two lakhs fifty-six thousand) to the claimants and directed the insurer to pay the same amount with interest at the rate of 7% per annum from the date of filing of the claim application to the claimants.

5. Mr. M. Sinha, learned counsel appearing for the appellant insurer submitted that the award is high and excessive in as much as the learned tribunal committed an error in applying multiplier 18. Mr. Sinha further submitted that the deceased was a minor and non-earning member and in such a contingency the annual dependency ought to have been calculated by taking notional income of the deceased at Rs. 15,000/- per annum. Per contra, Mr. A.K. Mohanty, learned counsel appearing for the respondents/claimants supported the award.

6. From the evidence on record, it is evident that the deceased was seven years old and was studying in Class-II at the time of accident. Thus, the sole question that hinges for consideration of this Court is as to what should be just compensation, when a minor dies in a motor vehicle accident. Assessment of compensation for loss of human life is a very difficult task. It becomes baffling when the deceased is a child. No amount of compensation can wipe out tears from the eyes of the parents.

7. The Hon"ble Supreme Court in the case of Lata Wadhwa and Others Vs. State of Bihar and Others, while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years. In paragraph-11 of the said judgment their Lordships held that the compensation amount for the children between age group of 5 to 10 years should be Rs. 1.5 lakhs, to which conventional figure of Rs. 50,000/- should be added and thus, the total amount would be Rs. 2.00 lakhs. The tribunal constituted under the M.V. Act, 1988 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". The compensation must be "just" it cannot be a bonanza; not a source of profit; but the same should not be a pittance. In the case of State of Haryana and Another Vs. Jasbir Kaur and Others, , the Hon"ble apex Court in paragraph-7 of the judgment held as follows:--

7. 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 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 bonanza; not source of profit; but the same should not be pittance. The Courts and tribunals have a duty to weight 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 and special features, if any. Every method or mode adopted for assessing compensation has to be considered in the back ground 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.

8. The Hon^{ble} apex Court in the case of New India Assurance Co. Ltd. Vs. Satender and Others, held as under:--

9. There are some aspects of 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 stars, beyond the reach of monetary tape-measure. The determination of 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 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. In cases, where parents are claimants, relevant factor would be age of parents.

10. In case of the death of an infant, there may have been no actual pecuniary benefit derived by his parents during the child's lifetime. But this will not necessarily bar the parents' 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 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 the 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 the 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 the. (See *Lata Wadhwa v. State of Bihar*).

9. The Hon''ble apex Court in the case of *Kaushlya Devi Vs. Shri Karan Arora and Others*, , while dealing with the awarded amount in case of death of a minor in paragraph-12 held as follows:--

12. In case of young children of tender age, in view of uncertainties abound, 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.

10. In *R.K. Malik and Another Vs. Kiran Pal and Others*, , the Hon''ble Supreme Court held that the real problem that arises in the cases of death of children is that they are not earning at the time of accident. Their Lordships further held that under no stretch of imagination it cannot be said that the parents, who are the claimants have not suffered any pecuniary loss. Applying the principles enumerated in *Lata Wadhwa* and *Satender* supra to the facts of the present case, this Court feels that a sum of Rs. 2,00,000/- (rupees two lakhs) would meet the ends of justice. The same shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of payment. The award is modified to the extent above. The appellant is directed to deposit aforementioned amount within three months before the tribunal. There shall be no order as to costs.