
(2014) 12 KL CK 0045

In the High Court Of Kerala

Case No : M.A.C.A. Nos. 1053, 1262 and 2444 of 2014

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

N.P. Ibrahim

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163A, 163A(3), 166, 168

Citation : (2014) 12 KL CK 0045

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : A.R. George, Advocate for the Appellant; Grashious Kuriakose, Sr. Advocate and George Mathews, Advocate for the Respondent

Judgement

P.V. Asha, J.—The compensation awarded in O.P(M.V) 335 of 2008 and O.P(M.V) 336 of 2008 by the Motor Accident Claims Tribunal, Thalasseri are under challenge by the Insurance Company in M.A.C.A No. 1053/2014 on the ground that it is excessive. M.A.C.A No. 2444/2014 is by the claimants in O.P(M.V). 335/2008 on the ground that it is inadequate. Claimants in both the O.P(M.V)s are the same unfortunate parents now in the age group of 33-36, who lost the life of their children, aged 6 in one case and aged 5 in the other case. The fatal accident occurred on 28.02.2008 when the children who were walking along the margin of the road were knocked down by a lorry, which came in a rash and negligent manner, when the children, along with other injured, were returning home after attending classes in Madrasa.

2. As against the claim for Rs. 5 lakhs, the Tribunal awarded a sum of Rs. 3,72,000/- in both the cases. Applying the multiplier of 15 and taking notional income of Rs. 15,000/- per annum, the Tribunal awarded a sum of Rs. 2,25,000/- towards loss of dependency; Rs. 50,000/- towards pain and suffering; Rs. 75000/- towards loss of future prospects; Rs. 20000/- towards funeral expenses; and Rs. 2000/- towards transport expenses. Tribunal relied on the principles laid down in R.K. Malik and Another Vs. Kiran Pal and Others, and Sree

Devi Vs. K.S.R.T.C .

3. According to the claimants the notional income reckoned is too low and the assessment of compensation is not correct. According to the Insurance Company, such notional income cannot be taken in the case of children aged 5 and 6. Sri. A.R. George, the learned Counsel for the Insurance Company assails the award, relying on the judgments United India Insurance Co. Ltd. Vs. Ajith, , & Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others, and in Kaushlya Devi Vs. Shri Karan Arora and Others, . He further submits that the maximum that could be awarded was Rs. 1.5 lakhs in the light of the judgment of the apex court in Puttamma and Others Vs. K.L. Narayana Reddy and Another, .

4. At the same time the learned Counsel appearing for the claimants seeks enhancement in the light of the judgments of the Hon"ble Supreme Court in Kumari Kiran Vs. Sajjan Singh, , V. Mekala Vs. M. Malathi and Another, , Kishan Gopal and Another Vs. Lala and Others, , Reshma Kumari and Others Vs. Madan Mohan and Another, and R.K. Malik and Another Vs. Kiran Pal and Others, . It is submitted that the notional income ought to have been reckoned as Rs. 30,000/- per annum as done in Kishan Gopal (supra).

5. In order to examine the rival contentions on either side, it is necessary for us to have a look at the factual circumstances leading to the judgments cited. In United India Insurance Co. Ltd. Vs. Ajith, a 4 year old daughter met with the fatal accident on 3.2.1992. The Tribunal found the entitlement of parents for compensation of a sum of Rs. 2,18,000 and passed an award for Rs. 2,03,000/-, since the claim was limited to that amount. In appeal, a Division Bench of this court after considering almost all the precedents-in respect of minor children, reduced the compensation to Rs. 1,18,000/-, after observing the guidelines laid down in Amati Hymavathi and Another Vs. Nissankararao Srikrishnamurthy and others, . There, one of the guidelines fixed was that Rs. 15000/- was to be the minimum amount of compensation in the case of death of children and Rs. 25000/- to others in respect of accidents occurred before 1-10-1982 - the date of introduction of S. 92A of Motor Vehicle Act and Rs. 25,000/- in respect of accidents occurred after 14-11-1988, the date on which S. 140A of the Motor Vehicles Act was amended. In that case, Rs. 35,000/- was the amount awarded by the Andhra Pradesh High Court. This Court, after referring to Lata Wadhwa's case and M.S. Grewal's case, observed that the compensation was to be fixed in the light of the principles laid down by the Supreme court in those two cases. Seeing that there was no material before it, this court found it difficult to justify an enhancement. The Tribunal arrived at the compensation of Rs. 3 lakhs, after, considering the age of parents and adopting a multiplier of 5, on the assumption that the child would have been given good education and she would have reached the age of earning power at the age of 23 and would have contributed @ Rs. 2500/- per month, to her parents, till her marriage i.e. for 5 more years. The multiplicand actually applied was Rs. 5000/-. The High Court found that but for the wrong calculation made by the Tribunal, it would have been only Rs. 1.5

lakhs if the monthly income of Rs. 2,500/- was reckoned. It was also found that there was no material before the Tribunal to arrive at that figure. This Court therefore held that Rs. 1 lakh would be sufficient compensation towards pecuniary loss. The amounts awarded by the Tribunal towards transportation, damages to clothings; medical expenses; funeral expenses; pain and suffering and towards love & affection were maintained and the total compensation was reduced to Rs. 1,18,000/-. It is to be noted that the accident occurred in that case on 9.2.1993. The present case is of 28.02. 2008.

6. In *Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others*, , a two Judge Bench of the Apex Court was considering an appeal by the Insurance company. Claimants were the parents who lost their 7 year old son in a motor accident, occurred on 20.11.1994. The Tribunal awarded a sum of Rs. 51,500/-. Insurance Company was directed to indemnify the owner of the offending vehicle towards the compensation awarded. Owner filed appeal before the High Court of Karnataka. In the cross appeal of the claimants, compensation was enhanced to Rs. 1,52,000/-. Insurance Company approached the Apex Court with the contention that the driver did not have license for driving heavy motor vehicle at the relevant time. There the Hon"ble Supreme Court, after taking note of *Swaran Swing's* case, allowed the appeal partly, holding that the insurer was not liable to indemnify the insured, but maintaining the award passed by the Tribunal. At the same time the Supreme Court, considered the imponderables and guess work involved in determining the compensation in cases involving minor children, and took note of the judgment in *Lata Wadhwa and Others Vs. State of Bihar and Others*, . It was a case of accident by fire. A lot of persons in several age groups lost their lives and several got injured. Children below the age of 5, in the age group of 5-10 and 10-15 were grouped separately, for the purpose of compensation. There the Supreme Court enhanced the compensation by substantial amounts. The following observation made by the Apex Court is relevant:

"6. 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 a 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."

It was further observed that in the case of the death of an infant, there may have been no actual pecuniary benefit derived by the parents during the child's life-time. But this will not necessarily bar the parents' claim. In this context, it is to be noted that the claimants -parents in the present cases were in their early

thirties when they faced the tragedy.

7. The dictum in *Kaushlya Devi Vs. Shri Karan Arora and Others*, was in respect of an accident occurred on 5.2.1997, in which the 14 year old son of the claimant lost his life. The Tribunal awarded a sum of Rs. 1 lakh as against the claim for Rs. 10 lakhs, to be paid by the owner. The claimant's appeal before High Court was dismissed. The Apex Court (Division Bench of 2 judges) also dismissed the appeal, after analyzing the issue regarding compensation in the cases relating to minor children and taking note of the principles laid down by Lord Diplock in *Mallett v. McMonagle* [1970 AC 166], *Davies v. Taylor* [1974 AC 207] and the uncertainties involved in the matter of fixing the damages, with reference to the principles laid down by Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942)1 AC 601(HL). It was also observed that the compensation has to be just and the income of the deceased child or the financial loss caused by parents are not capable of assessment on estimated basis.

8. In *Puttamma and Others Vs. K.L. Narayana Reddy and Another*, , the widow and children filed claim petition. The deceased was 48 years old, working as Type setting Assistant, drawing salary of Rs. 13331/-. He was knocked down from his scooter, by a tanker lorry. Tribunal passed an award for Rs. 9,03,600/-. In appeal, High Court enhanced it to Rs. 11,25,000/-. High Court treated him as aged 50; adopted split multiplier -applied multiplier of 10 while reckoning income as Rs. 8295/- and applied multiplier of 2 reckoning Rs. 4147/-. Appellants approached the apex court seeking enhancement, challenging adoption of split multiplier and applicability of multiplier under 2nd schedule for application under S. 166 of the M.V Act. After considering various aspects relating to the history, enactment, various issues and case laws hitherto and pointing out the requirement of amendment to the 2nd schedule in view of the enormous rise in cost of living index, the apex court in para 56 held as follows:

"56. The Central Government was bestowed with duties to amend the Second Schedule in view of S. 163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of S. 163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs. 1,00,000/- (Rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs. 1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under S. 163-A of the Act,

1988."

(emphasis supplied)

Therefore it can be seen that even in claims under 163A, the Hon"ble Supreme Court directed to fix the compensation at 1 lakh/1.5 lakh only if it is higher than that provided in 2nd schedule. In this case the Tribunal has assessed the compensation reckoning, Rs. 15000/- only towards the annual income.

9. Now we have to consider the contentions of the claimants. In Kishan Gopal and Another Vs. Lala and Others, , a 10 year old boy Tikaram fell down fatally from the trolley of the tractor in which he was travelling, on 19.7.1992. The Tribunal dismissed the claim petition on the ground that the claimants could not prove that the death was caused due to rash and negligent driving of the tractor. The appeal before the High Court was also dismissed. Contentions were raised to the effect that the driver did not have valid driving license; passenger is not permitted in tractor; death happened while sitting in tractor, etc. The claim of claimants on the notional monthly income @ Rs. 2000/- was also in dispute. The Apex Court set aside the concurrent finding of facts by the Tribunal and the High Court, deprecating the casual approach of the High Court. The Apex Court, relying on Lata Wadhaw's case, found that the circumstances of the case required to take the notional income as Rs. 30,000/- per annum and adopted multiplier of 15, taking note of the age of the young parents of the deceased. Thus a sum of Rs. 4,50,000/- was awarded in addition to a sum of Rs. 50,000/- towards conventional heads of love and affection and funeral expenses and interest @ 9% per annum.

10. V. Mekala Vs. M. Malathi and Another, was the case of an injured girl studying in 10th standard who incurred 70% permanent disablement. There the notional income taken @ 6000/- per month, by the courts below was enhanced to Rs. 10,000/- by the Apex court.

11. Kumari Kiran Vs. Sajjan Singh, was a case where father and 2 minor children sustained injuries in a motor accident on 4.6.2009. The daughter aged 10 incurred 30% permanent disablement and the son had 20% disablement. As the disability was between 10% and 30%, the apex court, following Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Limited and Another, , awarded a sum of Rs. 300000/- for permanent disability Rs. 25000/- each towards agony to parents and Rs. 25000/- each towards future medical expenses.

12. In Reshma Kumari and Others Vs. Madan Mohan and Another, , a three Judge Bench of the apex court held;

"in cases where the age of the deceased is upto 15 years, irrespective of S. 166 or 163A under which the claim has been made, multiplier of 15 and assessment as indicated in second schedule subject to correction as pointed out in column (6) of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

shall be followed."

In the cases before us the Tribunal has assessed the compensation in accordance with the aforesaid principle only.

13. R.K. Malik and Another Vs. Kiran Pal and Others, was a case where 29 children proceeding to the school in a bus, fatally got drowned in a river when their bus overturned to Yamuna river, on 18-5-1997. The Tribunal awarded a sum of Rs. 1,55,000/- to the dependents of children in the age group of 10 to 15 years and Rs. 1,65,000/- to those within 15 to 18 years. Three of the children were less than 10 years. Out of these 3, compensation of Rs. 1,05,000/- was awarded to 1 and compensation of Rs. 1,30,000/- and Rs. 1,31,000/- (1000 for loss of books) respectively was awarded to the other 2. As per the Second Schedule of the Act, the balance amount was awarded for loss of dependency, that was calculated on notional income of Rs. 15,000/- per annum. Rs. 5,000/- was deducted towards personal living expenses. The Tribunal applied multiplier of 15 for children below 15 years and multiplier of 16 for children between 16 and 18 years respectively. The High Court held that the appellants were entitled to enhancement of compensation in all the cases by Rs. 75,000/- and Rs. 1000/-. Aggrieved by inadequacy in compensation, the parents approached the Apex Court, which enhanced it further by another 75000/- towards future prospects. In para 14 the Apex Court held as follows:

"14. Under the Second Schedule of the Act in the case of a non-earning person, his income is notionally estimated at Rs. 15,000 per annum. The Second Schedule is applicable to claim petitions filed under Section 163-A of the Act. The Second Schedule 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 under Section 166 read with Section 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases."

The necessity for awarding compensation for pecuniary as well as non-pecuniary damages was stressed. It was also observed that loss of expectancy of life and pain and suffering on that account was common and uniform to all regardless of the status and that non-pecuniary compensation should not be fixed on the basis of economic wealth and background. Followings the principles laid down in Lata Wadhwa and Others Vs. State of Bihar and Others, , the Supreme Court held that the parents were entitled to compensation towards future prospects also and the sum of Rs. 75000/- awarded by the High Court, which came to about half of the amount given as pecuniary damages, to be treated as compensation towards future prospects, over and above what was already granted by the High Court. In para 40, it was held as follows:

"40. Needless to say, pecuniary damages seek 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 the 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".

14. In the case of M.S. Grewal and Another Vs. Deep Chand Sood and Others, students of a public school got drowned in a river due to negligence of the teachers. There the Apex court held that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency and to ensure that a just compensation was awarded.

15. In Lata Wadhwa and Others Vs. State of Bihar and Others, the 1st petitioner lost her children and parents in a devastating fire which engulfed the VIP pandal where 150th birth anniversary of Sri. Jamshedji Tata was being celebrated on 3-3-1989 within the factory premises. 60 persons died and 111 got burn injuries. 26 out of the 60 died, were children. All of them were relatives/employees of Tata Iron & Steel Company. The apex court had on 15-12-1993, sought the help of Shri Y.V. Chandrachud, former Chief Justice of India to look into the question of grant of compensation to the injured as well as dependants of those died in the tragic incident, as an arbitrator. The Arbitrator divided the children into two groups, the first within the age group of 5 to 10 years and the second group within the age group of 10 to 15 years. In the case of children within the age group of 5 to 10 years, a uniform sum of Rs. 50,000 was held payable as compensation. Conventional figure of Rs. 25,000 was added to it and all the legal heirs of the 14 children, a consolidated sum of Rs. 75,000 each, was awarded. In respect of 10 children, who were in the age group of 10 to 15 years, their contribution to the family was found to be at Rs. 12,000 per annum. Applying 11 as multiplier, depending upon the age of the father, conventional compensation of Rs. 25,000/- was added to each case. Thus the compensation in their case i.e. of those above 10 years of age, was Rs. 1,57,000 each. Following the principle laid down by the House of Lords in Taff Vale Rly. v. Jenkins it was observed therein that in the case of the death of an infant, there may not have been any 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. There the TISCO, submitted that the compensation determined for the children of all age groups could be doubled, as the determination made was grossly inadequate. The apex court observed that amount of money could compensate the ir-recoupable loss of a child to the parents. Having regard to the environment from which those children were brought, their parents being reasonably well-placed officials of Tata Iron and

Steel Company, and on considering the submission of their counsel, the Apex Court directed that the compensation amount for the children between the age group of 5 to 10 years should be three times i.e., it should be Rs. 1.5 lakhs, to which a conventional figure of Rs. 50,000 should be added, making the total amount in each case to Rs. 2.00 lakhs.

16. On a scanning of these judgments it can be seen that there is no upper limit prescribed for the minor children in any of these judgments. At the same time the compensation cannot in no way be less than what is given as per the 2nd schedule, even in petitions filed under Section 166, as held in several cases including the 3 judge bench decision of the Supreme Court in Reshmakumari-(2013) 12 SCC 65. In Puttamm case (supra) the direction of the Apex Court was in respect of the petitions filed under S. 163A. It is also pertinent to note that the requirement to amend the 2nd schedule was stressed in view of the present cost of living. The judgments relied on by the Insurance Company were in respect of motor accidents occurred on United India Insurance Co. Ltd. Vs. Ajith, ; on Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others, ; on Kaushlya Devi Vs. Shri Karan Arora and Others, ; on Puttamma and Others Vs. K.L. Narayana Reddy and Another, . In the light of the factual circumstances and the principles laid down in the judgments rendered subsequent to the 1st referred 3 cases and even subsequent to Puttamma, we are unable to accept the contentions raised by the Insurance Company.

17. It is a fact that in the cases of children of tender age, their income or the prospects of the future increase in the income or chances of advancement in their career are not capable of proper determination, in view of the uncertainties in regard to their academic pursuits, achievements in career, thereafter advancement in life, etc. Therefore, it is not possible to determine the exact income of the deceased child or the financial loss suffered by the parents accurately. Viewed in the above background, it can be seen that the Tribunal has passed the award, following the principles laid down in various judgments of the Supreme Court and this Court. After considering all these judgments and the rival contentions, we are of the considered view that the compensation awarded is not excessive, as contended on behalf of the Insurance Company.

18. At the same time we find that the claimants have not produced any material before the Tribunal so as to assert their claim for reckoning a higher rate of notional income. In the cases of Lata Wadhwa, M.S. Grewal, R.K. Malik, etc, the apex court found the potential of the children. In the 1st case the Company itself admitted that higher compensation was required. In the other cases there were records to see the standard, progress and caliber of the children. In Kishan Gopal it was found that the child was assisting his father in the agricultural activities. Other cases cited are in respect of injuries.

19. Of course, it is difficult to contain the drastic tragedy faced with the claimants at their young age having lost both their children -daughter and son of tender age. There is no answer for their shock, their heart burn, mental agony and loss

of expectations which will permeate throughout their life term. The degree of agony does not in any way depend on the affluence or status of parents. But in the absence of any materials, we are unable to enhance the compensation. However, in the circumstances of the case, we are of the view that award of the Tribunal does not require any modification.

The appeals are dismissed accordingly. No cost.