

(2002) 07 KL CK 0049
In the High Court Of Kerala
Case No : M.F.A. No. 1367 of 1999

United India Insurance Co. Ltd.

APPELLANT

Vs

Ajith

RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2003) ACJ 352 : (2003) 1 ILR (Ker) 407

Hon'ble Judges : K.S. Radhakrishnan, J;K.A. Mohamed Shafi, J

Bench : Division Bench

Advocate : A.A. Mohammed Nazir, for the Appellant; N. Ramdas and Lalji P. Thomas, for the Respondent

Final Decision : Partly Allowed

Judgement

K.A. Mohamed Shafi, J.—The 3rd respondent, insurer in O.R (MV) 662 of 1992 on the file of the Motor Accidents Claims Tribunal, Pathanamthitta is the appellant. The award dated 2.1.1999 is under challenge.

2. The respondents 1 and 2 herein, the claimants before the MACT claimed a compensation of Rs. 2,03,000/- for the death of their 4 year old daughter, Neethu, in a Motor Accident. Originally, the claim was for Rs. 1,03,000/- and subsequently, by amending the petition, they made enhanced claim of Rs. 2,03,000/-.

3. The fact that Neethu, the 4 year old child of the respondents 1 and 2, studying in the U.K.G. Class met with a road accident on 3.2.1992 at about 3.40 P.M. and she succumbed to injuries at 8.30 P.M. while undergoing treatment in the Medical Mission Hospital, Thiruvalla is not in dispute. The driver and the owner of the offending lorry who were respondents 1 and 2 before the Tribunal did not contest. The 3rd respondent, insurer alone contested. After enquiry, the Learned Tribunal found that the accident occurred due to the rash and negligent driving of the lorry by the driver and the claimants therein are entitled to a total

compensation of Rs. 2,18,000/-, but restricted the compensation amount to the claim of Rs. 2,03,000/-, made by the claimants. Accordingly, the Tribunal awarded a compensation of Rs. 1,78,000/- after deducting Rs. 25,000/- paid as per interim order with interest at 12% per annum and cost of Rs. 1000/- against respondents 1 to 3 jointly and severally and directed the 3rd respondent insurer to deposit the amount within 3 months failing which directed the insurer to pay interest at 18% per annum after the expiry of 3 months from the date of the award.

4. In this MFA the appellant, insurer challenges the quantum of compensation awarded as well as the direction to pay interest at 12% and the further direction to pay penal interest at 18% on failure to deposit the amount within 3 months from the date of the order.

5. The appellant vehemently contended that the award of Rs. 2,03,000/- as compensation for the death of a 4 year old child is highly exorbitant and out of all proportions and against the principles laid down by this Court as well as the various other High Courts and Supreme Court regarding payment of compensation for the death of young children. The counsel for the appellant also submitted that at any cost the award of compensation of Rs. 1,00,000/- in this case would have been the maximum amount awardable in this case on considering the entire facts and circumstances of the case and the evidence on record. In support of the contentions that the compensation awarded in this case is highly exorbitant, the counsel for the appellant relied upon various decisions.

6. In the decision reported in *Gobald Motor Service Ltd. and Anr. v. R.M.K. Veluswamy and Ors.* (1958 ACJ 179), the Supreme Court observed as follows:

"Therefore, the actual extent of the pecuniary loss to the respondents may depend upon data which cannot be ascertained accurately, but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained".

That was a case in respect of compensation claimed under the Fatal Accidents Act, 1855 in respect of an accidental death occurred in September, 1947. In that case the award of Rs. 25,250/- u/s 1 of the Fatal Accidents Act and Rs. 5000/- u/s 2 of the Act to the widow and 5 sons and Rs. 1000 to the father of the deceased is upheld by the Supreme Court.

7. In the decision reported in *C.K. Subramania Iyer and Ors. v. T. Kunhi Kuttan Nair and Ors.* (1970 ACJ 110), the award of Rs. 6000/- being compensation as against the claim of Rs. 30,000/- for the death of a child aged about 8 years due to an accident occurred on 26.6.1956 is confirmed by the Supreme Court. That was also a case arisen under the Fatal Accidents Act, 1855. In that judgment, the

Supreme Court has observed as follows:-

"The law on the point arising for decision may be summed up thus: Compulsory damages under 1A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that u/s 2, the measure of damages is the economic loss sustained by the estate. 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 but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the appellate court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration."

8. In the decision reported in *Andhra Pradesh State Road Transport Corporation v. G. Ramanaiah* (1988 ACJ 223), the question that came up for consideration before the Single Judge of the Andhra Pradesh High Court is what will be the reasonable compensation payable to the parents of the children died in accidents. After elaborate consideration of the various decisions and various aspects of the case, the learned Single Judge found that in the case of children above 5 years and below 10 years, it is permissible to arrive at conventional amounts, which may range upto Rs. 15,000/- for accidents in the late seventies. It is also stated that in the case of children below 5 years, a nominal amount of Rs. 5000/- may perhaps be granted since there is no decided case of award of damage to the parents. It is further held that :

"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".

9. In the decision reported in *Bimla Devi and Ors. v. National Insurance Co. Ltd. and Anr.* (1988 ACJ 981), a Full Bench of the Punjab and Haryana High Court has observed as follows:

"Thus it appears to us that if the age of the deceased child is between 5 and 9 years (below ten years) there is not much scope for evaluating the multiplicand exactly but at the same time, the reasonable expectation of pecuniary benefits in

the future is not totally ruled out. It is true that certain High Courts have computed the dependency for these children also but, as pointed out by their Lordships of the Supreme Court, this is a mere guesswork. In our view, it may not be very much correct to proceed to compute mathematically the future damages when the annual dependency is likely to be a pure guess.

In 1956, their Lordships of the Supreme Court took Rs. 5,000/- as a "conventional figure", and the same can be upgraded on the basis of inflation. Even on that basis, at least a sum of Rs. 10,000/- will be payable for an accident in the late eighties having regard to the inflation between 1956 and 1988".

10. The Full Bench also held that in the absence of any special circumstances a sum of Rs. 6000/- may be reasonable compensation to be awarded to the parents in view of the fact that the money value has declined.

11. In the decision reported in R. Ayyavu and Another Vs. Gopinathan Nair and Another, , a Division Bench of this Court considered the principle for ascertainment of fair and reasonable compensation in case of the death of a child aged 5 years. In that case, the accident occurred on 3.12.1981. Though a total compensation of Rs. 48,000/- was claimed by the parents of the deceased child, the Tribunal awarded Rs. 10,000/- as compensation. This Court found that the appellant/ parents of the deceased child are entitled to a compensation of Rs. 48,000/- with interest thereon at 12% per annum from the date of application till payment. The Division Bench has held that the Indian jurisprudence had taken into consideration the anguish, agony and the mental suffering of the living spouse and parents on the death of the victim by providing a provision for payment of compensation under no fault liability. It is also held that in the case of death of a child on account of an accident, pain and suffering of the child is a valid head of claim. It is further held that loss of expectation of life is also a claim in the case of death of a child. Considering all these aspects the Division Bench of this Court has enhanced the compensation from Rs. 10,000/- to Rs. 48,000/- in that case.

12. In the decision reported in Amali Hyrnvathi v. Nissankararao Srikrishnamurthy, AIR 1998 Andhra Pradesh 345, a Single Judge of the Andhra Pradesh High Court followed the above decision of this Court and after elaborate consideration of various other decisions, laid down the following guidelines for the guidance of the Tribunal and the Courts in paragraph 37 of the judgment.

"1. The items of compensation in cases of death of children should not be different from the items of compensation for the death of adults;

2. While awarding the conventional sum for the death of the children, all the factors should be taken into consideration including the age of the deceased, the age of the parents or the dependents, the possibility of the deceased growing up and contributing to the family in future in an orderly life etc;

3. The monetary loss to the claimants should also be awarded subject to proof as

special damages in each case;

4. No precedent should be taken in such a question as the conclusion in the matter as each case has to be considered on its own merits subject to the general principles;

5. No amount of compensation as conventional sum should be taken as fixed;

6. The minimum amount of compensation awardable for the case of death of children as in the case of adults shall be as follows:

i) Rs. 15,000/- (Rupees fifteen thousand) for the death of children in respect of the accidents occurred on or after the date when Section 92-A of 1939 Act was brought on the statute book i.e., 1.10.1982 ;

ii) Rs. 25,000/- (Rupees twenty five thousand) for the death of children in respect of the accidents occurred on or after the date on which Section 140 of 1988 Act was amended by Act No. 54 of 1994 ie., 14.11.1994.

7. The compensation in each case may be more than the minimum amounts of compensation stated above in each case depending upon the facts and circumstances of each case which should be proved;

8. Any other item of compensation as suggested in the article "Compensation for the death of children in motor accidents" by Smt. S. Lalitha, Reader, Department of Law, Sri. Krishnadevaraya University, Anantapur (1991 ACJ 18) may also be taken into consideration depending the facts and circumstances of each case;

9. It shall not be taken that either the Supreme Court or this Court or any other Court has laid down the law in clear terms that the compensation in the case of death of children for a particular age is a known sum or a definite sum as indicated in some of the precedents and it has to be worked out in each case depending upon the facts and circumstances of each case."

In that case, the Andhra Pradesh High Court awarded a compensation of Rs. 35,000/- in respect of the death of a child aged 4 years, studying in the LKG.

13. In the recent decision reported in Lata Wadhwa and Others Vs. State of Bihar and Others, the Supreme Court awarded a total compensation of Rs. 2,00,000/- to the parents in the case of death of children between the age group of 5 to 10 years. 60 persons including women and children died and 113 others injured in the fire accident occurred on 3.3.89. In that case, the learned counsel appearing for the TISCO, which was liable to pay compensation submitted before the Supreme Court in their counter affidavit that the company does not wish to treat the litigation as an adversarial one and on the other hand the matter is left to the court for determination of the monetary compensation to be paid according to law. The Supreme Court requested Sri. Y.V. Chandrachud, former Chief Justice of India to look into the matter and to determine the compensation payable to the legal heirs of the deceased as well as the compensation payable to the injured persons. In the report, the former Chief Justice of India suggested a uniform

amount of Rs. 50,000/- and also in addition a conventional figure of Rs. 25,000/- as compensation in respect of children aged between 5 to 10 years, since no evidence was adduced before him by the claimants to make out any special reason. Different amounts were suggested in respect of the children of higher age group. Shri Nariman, the counsel appearing for the TISCO submitted before the Supreme Court that the compensation amount determined for the children could be doubled by the Supreme Court. Accordingly the Supreme Court directed the Tata Iron and Steel Co., to pay a compensation of Rs. 1,50,000/- to which a conventional figure of Rs. 50,000/- should be added and thus a total amount of Rs. 2,00,000/- should be paid in each case in the case of children between 5 to 10 years of age.

14. The observation made by the Supreme Court in that judgment would go to show that the amount of compensation is awarded on the basis of admission rather than on the basis of determination of the reasonable compensation by the Court in that case. In that judgment, the Supreme Court has observed as follows:

"In case of the 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.

xxx xxx xxx xxx 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 Sri. Justice Chandrachud to enable him to arrive at just compensation in such cases and therefore he has determined the same on an approximation."

15. In the decision reported in *M.S. Grewal and Another Vs. Deep Chand Sood and Others*, , the Supreme Court has held that the award of compensation of Rs. 5,00,000/- to each of the parents of 14 students who died in that accidents is not excessive. In that case, 14 students studying in IVth, Vth and VIth classes of Dalhousie Public School, Badhani, Pathankot died in an accident due to drowning on 28.5.1995, while they were on a picnic at Tandapatanindora on the bank of River Beas. In that case which arose under the provisions of Fatal Accidents Act, 1855, the Supreme Court found that the compensation of Rs. 5,00,000/- with interest at 6% per annum to the parents of those students is reasonable and adequate. In paragraph 12 of the judgment the Supreme Court has observed as

follows:

"As noticed above, a large number of decisions were placed before this Court as regards the quantum of compensation varying between Rs. 50,000/- to one lakh 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 dependant 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 the 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".

At paragraph 35 of the judgment, the Supreme Court has observed as follows:

"The decision in Lata Wadhwa, thus, is definitely a guiding factor in the matter of award of compensation wherein children died under an unfortunate incident as noticed more fully herein before in this judgment".

16. The quantum of compensation to be awarded to respondents 1 and 2 in this appeal has to be determined on the basis of the principles laid down in the above decisions, especially in the latest two decisions of the Supreme Court referred to above. In this case, it is no doubt proved that a young child aged 4 years, studying in the U.K.G. Class met with a tragic death while returning from the school due to the accident. Even though in the O.A. it is stated that the child was very proficient and with bright prospects in studies and life absolutely no evidence is adduced by the claimants in this case regarding the general proficiency and other facts regarding the child so as to enable the Tribunal to consider whether there is any exceptional circumstances in this case to award enhanced compensation. Therefore the claimants in this case, the parents of the child are only entitled to the normal compensation which can be awarded.

17. It is true that the parents of the deceased child are educated and well placed in life. The parents of the father of the child were teachers. The father's brother is a Major in Army. His another brother is an Executive Officer and his sister is a teacher. The parents of the mother of the child were teachers and retired as Head Master and Head Mistress. Therefore, it is clear that the child and her parents had very good social and educational background. But without any material regarding the health, character, general proficiency of the child etc., it is not possible to consider whether this case is coming under any exceptional category.

18. The counsel for the appellant submitted that the parents of the deceased, who were bound to incur huge amounts for bringing up the child, her education and to give her in marriage, are not entitled to claim compensation without

deducting those amounts gained by them due to the premature death of the child. Therefore, while awarding compensation to the parents of the child, these aspects should be taken into consideration. It is true that those aspects are material in determining the compensation awardable to the parents of a young child by balancing the loss and gain to the parents due to the death of the child. It is pertinent to note that the lower court has adopted a multiplier of 5 on the assumption that 5 years after the child begin to earn she will be given in marriage and her contribution to the parents will be ceased after marriage. It is pertinent to note that u/s 125(d) of the Cr.P.C. a person having sufficient means is liable to pay maintenance to his or her parent who is unable to maintain himself or herself. There is statutory recognition of the right of the impecunious parents to get maintenance from the sons and daughters, and their liability to pay their parents even after the marriage. Hence the assumption that the contribution by deceased girl Neethu would have stopped with her marriage is incorrect. It is also clear from the various decisions referred to above that determination of compensation payable to the parents in respect of the death of a minor child by adopting the multiplication method will not be safe, correct or proper. As already noted, in the absence of any evidence adduced by respondents 1 and 2, the parents of the deceased child in this case to bring their claim to any exceptional category and to enhance the compensation payable, and considering the quantum of compensation found awardable by the Tribunal, the method of calculation adopted by the learned Tribunal which appears to be reasonable in this case, has to be endorsed.

19. It is seen from the award passed by the learned Tribunal that the Tribunal found that good education would have been given to the child and after 23 years of the accident, she would have reached the age of earning power and she would have contributed Rs. 2500/- per mensem to her parents for a period of 5 years till she was given in marriage. Thus adopting a multiplier of 5, the learned Tribunal calculated the pecuniary loss of her parents at Rs. 3,00,000/- and by deducting one-third on account of vagaries and uncertainties of life, found that they are entitled to Rs. 2,00,000/- as compensation. The very calculation made by the Tribunal in this case is wrong. After adopting the monetary loss at Rs. 2500/- per mensem, the learned Tribunal wrongly enhanced the amount to Rs. 5,000/- for multiplication. On the other hand, the proper multiplication would have been Rs. 2500 x 12 x 5 which will be an amount of Rs. 1,50,000/-. Thus even accepting the method of calculation adopted by the learned Tribunal the total amount of pecuniary loss would have been Rs. 1,50,000/- and after deducting one-third of the amount for vagaries and uncertainties of life, the actual amount of compensation which the respondents 1 and 2 are entitled on that count in this case as per the findings of the Tribunal will be Rs. 1,00,000/-.

20. Though the counsel for respondents 1 and 2 submitted that the award of Rs. 2,03,000/- in this case will be just and reasonable, absolutely no material is placed before the Tribunal that multiplicand of Rs. 5,000/- should be adopted instead of Rs.2500/- in this case or to establish that there is any exceptional or

extra-ordinary circumstances to award higher amount as compensation in this case. Therefore, it has to be found that the respondents 1 and 2 in this appeal are entitled to Rs. 1,00,000/- being compensation for pecuniary loss. The tribunal has allowed the claim of Rs. 300/- for transportation to Hospital, Rs. 100/- for damages for clothing and articles, Rs. 600/- for hospital and medical expenses, and Rs. 2000/- for funeral expenses, made in Part-I to the total amount of Rs. 30007-. The Tribunal has also awarded Rs. 10,000/- as compensation for pain and suffering and Rs. 5000/- towards loss of love and affection. Though the counsel for the appellant submitted that the award on those two grounds is excessive, we find that those amounts awarded by the learned Tribunal is reasonable in this case. Hence the respondents 1 and 2 are entitled to Rs. 1,18,000/- being compensation in this case. Deducting Rs. 25,000/- paid as per the interim award, the respondents 1 and 2 are entitled to Rs. 93,000/- as compensation in this case. The cost of Rs. 1000/- awarded in this case is also reasonable.

21. The counsel for the appellant submitted that the direction made by the Tribunal to pay interest @ 12% per annum from the date of application and in default of payment within 3 months, to pay penal interest @ 18% per annum cannot be sustained, being contrary to law. It is well settled that interest on the compensation amount can be awarded at the maximum rate of 9% per annum. Therefore the respondents 1 and 2 are entitled to interest only at 9% per annum on the amount awarded from the date of petition till realisation.

22. In view of what is stated above, the appeal is allowed in part, the award passed by the Tribunal is modified and an amount of compensation of Rs. 93,000/- with interest thereon @ 9% per annum from the date of petition till payment is awarded. Rs. 1000/- towards cost awarded in favour of the respondents 1 and 2 is upheld. The other provisions in the award passed by the learned Tribunal will stand.