

Mohd. Ayyub and anr. Vs. Satish Kumar Gupta and ors.

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Court : Delhi

Decided On : Aug-06-2009

Reported in : 2009ACJ420

Judge : J.R. Midha, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 163A

Appeal No. : M.A.C. Appeal No. 400 of 2008

Appellant : Mohd. Ayyub and anr.

Respondent : Satish Kumar Gupta and ors.

Advocate for Def. : Tarkeshwar Nath and ; P.K. Mishra, Advs.

Advocate for Pet/Ap. : Iqbal Ashraf Rahmani, Adv

Disposition : Appeal allowed

Judgement :

J.R. Midha, J.

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 1,80,000 has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 22.11.2006 resulted in the death of Amir Khan. The deceased was survived by his parents who filed the claim petition before the learned Tribunal.

3. The deceased was aged 7 years at the time of accident and was studying in IV Standard. Deceased was going with his father from his residence to the market at Lal Bazar, Khanpur Mor, Loni, Ghaziabad when minibus bearing No. DL 1V-A 2309 came from front side and hit the deceased resulting in the death of the deceased. The learned Tribunal awarded Rs. 1,80,000 to the appellants.

4. Learned Counsel for the appellants refers and relies upon the judgment of this Court in the case of National Insurance Co. Ltd. v. Farzana : 2009 ACJ 2763 (Delhi), in which compensation of Rs. 3,75,000 has been determined in respect of the death of a child aged 7 years, following the judgments of the Hon'ble Apex Court and this Court in the cases of Manju Devi v. Musafir Paswan 2005 ACJ 99 (SC); Sobhagya Devi v. Sukhvir Singh II (2006) ACC 1997; Shyam Narayan v. Kitty Tours & Travels 2006 ACJ 320 (Delhi); R.K. Malik v. Kiran Pal : 2007 ACJ 2010 (Delhi) and R.K. Malik v. Kiran Pal : 2009 ACJ 1924 (SC). this Court held as under:

(4) In the case of Manju Devi v. Musafir Paswan 2005 ACJ 99 (SC), the Hon'ble Supreme Court awarded compensation of Rs. 2,25,000 in respect of death of a 13 years old boy by applying the multiplier of 15 and taking notional income of Rs. 15,000 as per the Second Schedule to the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:

(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. (5) The case of Sobhagya Devi v. Sukhvir Singh II (2006) ACC 1997, relates to the death of a 12 years old boy. Following the decision of the Apex Court in Manju Devi's case 2005 ACJ 99 (SC), Rajasthan High Court awarded Rs. 2,25,000 by applying the Second Schedule to the Motor Vehicles Act.

(6) The case of Shyam Narayan v. Kitty Tours & Travels 2006 ACJ 320 (Delhi), relates to the death of a child aged 5 years. this Court relying on the judgment of the Apex Court in Manju Devi's case 2005 ACJ 99 (SC), awarded compensation to the parents by applying the notional income of Rs. 15,000 and multiplier of 15 as per the Second Schedule and further awarded Rs. 50,000 for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:

(3) By and under the award dated 5.12.2003, a sum of Rs. 1,00,000 has been awarded to the appellants. While awarding sum of Rs. 1,00,000 to the appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs. 1,00,000.

(4) Had the Tribunal peeped into the Second Schedule, as per Section 163-A of [Motor Vehicles Act, 1988](#), it would have dawned on the Tribunal that vide serial No. 6, notional income for compensation in case of fatal accidents has been stipulated at Rs. 15,000 per annum.

(5) In the decision reported as Manju Devi v. Musafir Paswan 2005 ACJ 99 (SC), dealing with the accidental death of a 13 years old boy, while awarding compensation under the [Motor Vehicles Act, 1988](#), Apex Court took into account the notional income stipulated in the Second Schedule being Rs. 15,000 per annum.

(6) In the instant case, Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is up to 15 years, compensation determinable comes to Rs. 15,000 x 15 = Rs. 2,25,000.

(7) The learned Tribunal has awarded Rs. 1,00,000 towards loss of expectation of financial and moral support as also loss of company of the child, mental agony,

etc. I have found that the parents are entitled to compensation in the sum of Rs. 2,25,000 on account of loss of financial support from the deceased child. I award a sum of Rs. 50,000 for loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs. 2,75,000.

(7) In the case of R.K. Malik v. Kiran Pal : 2007 ACJ 2010 (Delhi), 22 children died in an accident of a school bus which fell in river Yamuna. this Court held the Second Schedule to the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. this Court awarded Rs. 75,000 towards non-pecuniary compensation.

(8) The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15.5.2009 and is reported as R.K. Malik v. Kiran Pal : 2009 ACJ 1924 (SC). The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects and granted further compensation of Rs. 75,000 towards future prospects of the children. The findings of Hon'ble Supreme Court are as under:

(19) The other issue is with regard to non-pecuniary compensation payable to the appellants-dependants on the loss of human life, loss of company, happiness, companionship, pain and suffering, loss of expectation of life, etc.

(20) In Halsbury's Laws of England, 4th Edn., Vol. 12, p. 446, it has been stated with regard to non-pecuniary loss as follows:

Non-pecuniary loss: the pattern.--Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries and indicating a bracket of damages into which a particular injury will currently fall. The particular

circumstances of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award.

The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessment of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.

(21) In the case of *Ward v. James*, (1965) 1 All ER 563, it was observed:

Although you cannot give a man so gravely injured much for his 'lost years', you can, however, compensate him for his loss during his shortened span, that is, during his expected 'years of survival'. You can compensate him for his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well-nigh insoluble. They are being asked to calculate the incalculable. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money. (22) The Supreme Court in the case of *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd.* : 1995 ACJ 366 (SC), has observed as follows in para 9:

(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 are 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 or profit up to the date of trial; (iii) other material loss. So far as 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. In this case, the court awarded non-pecuniary damages of Rs. 3,00,000 to the claimants.

(23) In *Common Cause, a Registered Society v. Union of India* : (1999) 6 SCC 667, it was observed:

(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 recognised 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 McGregor says, is generally more important than money: it is the best that a court can do. In *re: Mediana* (1900) AC 113, 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 recognises that as a topic upon which damages may be given.(24) It is extremely difficult to quantify the non-pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. A human life cannot be measured only in terms of loss of earnings or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualised and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a

consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness, etc. which is sometimes described as compensation paid for 'loss of expectation of life'. This head of compensation need not be restricted to a case where the injured person himself initiates action but is equally admissible if his dependant brings about the action.

(25) That being the position, the crucial problem arises with regard to the quantification of such compensation. The injury inflicted by deprivation of the life of a child is extremely difficult to quantify. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solatium is difficult to specify. The courts have, therefore, used the expression 'standard compensation' and 'conventional amount/sum' to get over the difficulty that arises in quantifying a figure as the same ensures consistency and uniformity in awarding compensation.

(26) While quantifying and arriving at a figure for 'loss of expectation of life', the court has to keep in mind that this figure is not to be calculated for the prospective loss or further pecuniary benefits that has been awarded under another head, i.e., pecuniary loss. The compensation payable under this head is for loss of life and not loss of future pecuniary prospects. Under this head, compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. This compensation is paid for loss of prospective happiness which the claimant/victim would have enjoyed had the child not been died at the tender age.

(27) In the case of *Lata Wadhwa v. State of Bihar* : 2001 ACJ 1735 (SC), wherein several persons including children had lost their lives due to a fire accident, the court awarded substantial amount as compensation. No doubt, the court noticed that the children who lost their lives were studying in an expensive school, had bright prospects and belonged to upper middle class, yet it cannot be said that

higher compensation awarded was for deprivation of life and the pain and suffering undergone on loss of life due to financial status. The term 'conventional compensation' used in the said case has been used for non-pecuniary compensation payable on account of pain and suffering as a result of death. The court in the said case referred to Rs. 50,000 as conventional figure. The reason was loss of expectancy of life and pain and suffering on that account which was common and uniform to all regardless of the status. Unless there is a specific case departing from the conventional formula, non-pecuniary compensation should not be fixed on basis of economic wealth and background.

(28) In Lata Wadhwa's case : 2001 ACJ 1735 (SC), wherein the accident took place on 3.3.1989, the multiplier method was referred to and adopted with approval. In cases of children between 5 and 10 years of age, compensation of Rs. 1,50,000 was awarded towards pecuniary compensation and in addition a sum of Rs. 50,000 was awarded towards 'conventional compensation'. In the case of children between 10 and 18 years compensation of Rs. 4,10,000 was awarded including 'conventional compensation'. While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs. 24,000 per annum instead of Rs. 12,000 per annum as recommended by Justice Y.V. Chandrachud Committee. This was in view of the fact that the company in question had an unwritten rule that every employee can get one of his children employed in the said company.

(29) In the case of M.S. Grewal v. Deep Chand Sood : 2001 ACJ 1719 (SC), wherein 14 students from a public school got drowned in a river due to negligence of the teachers. On the question of quantum of compensation, this Court had accepted that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency. It was emphasised that the court must ensure that a just compensation was awarded.

(30) In M.S. Grewal's case : 2001 ACJ 1719 (SC), compensation of Rs. 5,00,000 was awarded to the claimants and the same was held to be justified. Learned Counsel for the respondent No. 3, however, pointed out that in the said case the Supreme Court had noticed that the students belonged to an affluent school as

was apparent from the fee structure and, therefore, the compensation of Rs. 5,00,000 as awarded by the High Court was not found to be excessive. It is no doubt true that the Supreme Court in the said case noticed that the students belonged to an upper middle class background but the basis and the principle on which the compensation was awarded in that case would equally apply to the present case.

(31) A forceful submission has been made by the learned Counsel appearing for the claimants-appellants that both the Tribunal as well as the High Court failed to consider the claims of appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the courts below. On perusal of the evidence on record, we find merit in such submission that the courts below have overlooked that aspect of the matter while granting compensation. It is well settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the courts to consider the said aspect while awarding compensation. Reliance in this regard may be placed on the decisions rendered by this Court in *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas* : 1994 ACJ 1 (SC); *Sarla Dixit v. Balwant Yadav* : 1996 ACJ 581 (SC) and *Lata Wadhwa v. State of Bihar* : 2001 ACJ 1735 (SC).

(32) In view of discussion made hereinbefore, it is quite clear that the claim with regard to future prospect should have been addressed by the courts below. While considering such claims, child's performance in school, the reputation of the school, etc. might be taken into consideration. In the present case, records show that the children were good in studies and studying in a reasonably good school. Naturally, their future prospects 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. In the cases of *Lata Wadhwa*, : 2001 ACJ 1735 (SC) and *M.S. Grewal*, : 2001 ACJ 1719 (SC), the Apex Court recognised such future prospects 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.

(33) Besides, courts have been awarding compensation for pain and suffering and towards non-pecuniary damages. Reference in this regard can be made to *R.D. Huttangadi's case* : 1995 ACJ 366 (SC). Further, the said compensation must be just and reasonable. this Court observed as follows in *State of Haryana v. Jasbir Kaur* : 2003 ACJ 1800 (SC):

(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 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 the 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, limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and the 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-arbitrariness. If it is not so it cannot be just. (34) So far as the pecuniary damages are concerned we are of the considered view both the Tribunal as well as the High Court have 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 did not award any compensation under the head of non-pecuniary damages. However, in appeal the High Court elaborately discussed this aspect of the matter and awarded Rs. 75,000 as non-pecuniary damages. Needless to say, the pecuniary damages seek to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earnings 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 the 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.

(9) The learned Tribunal was in error in taking the notional income to be Rs. 22,500 per annum. Following the aforesaid judgments, notional income of the deceased is taken to be Rs. 15,000 per annum and applying the multiplier of 15, claimants are entitled to loss of dependency of Rs. 2,25,000. The claimants are also entitled to compensation of Rs. 75,000 towards future prospects in terms of the judgment of the Hon'ble Supreme Court in R.K. Malik v. Kiran Pal : 2009 ACJ 1924 (SC). The claimants are also entitled to a further sum of Rs. 75,000 as non-pecuniary damages in terms of the judgment of this Court in the case of R.K. Malik v. Kiran Pal : 2007 ACJ 2010 (Delhi), upheld by the Hon'ble Supreme Court. The claimants are entitled to total compensation of Rs. 3,75,000 (Rs. 2,25,000 + Rs. 75,000 + Rs. 75,000).

5. Learned Counsel for the appellants submits that the principles of law laid down in the above cases are applicable to the present case. In the case of National

Insurance Co. Ltd. v. Farzana : 2009 ACJ 2763 (Delhi), it has been held that the parents of the child aged 7 are entitled to pecuniary compensation of Rs. 2,25,000 according to the Second Schedule to the Motor Vehicles Act. Further Rs. 75,000 has been awarded as non-pecuniary damages following the judgment of this Court in the case of R.K. Malik v. Kiran Pal : 2007 ACJ 2010 (Delhi). Rs. 75,000 has been awarded towards future prospects following the judgment of the Hon'ble Supreme Court in the case of R.K. Malik v. Kiran Pal : 2009 ACJ 1924 (SC).

6. This case is squarely covered by the aforesaid judgment of this Court which related to the case of 7 years old child whereas the deceased in the present case was 7 years old. Following the aforesaid judgment, Rs. 2,25,000 is awarded towards pecuniary damages following the Second Schedule to the [Motor Vehicles Act, 1988](#), Rs. 75,000 is awarded for non-pecuniary damages and Rs. 75,000 is awarded for future prospects. The total compensation awarded is Rs. 3,75,000.

7. The appeal is allowed and the award amount is enhanced from Rs. 1,44,000 to Rs. 3,75,000. The learned Tribunal has awarded the interest at the rate of 12 per cent per annum which is not disturbed in respect of the original award amount of Rs. 1,44,000. However, on the enhanced award amount, the appellants shall be entitled to the interest at the rate of 7.5 per cent per annum from the date of filing of the petition till date of realization.

8. The respondent No. 3 is directed to deposit the enhanced award amount along with interest with the learned Tribunal within 60 days. Upon the said amount being deposited, the learned Tribunal shall release a sum of Rs. 50,000 to each of the two appellants. The remaining amount be kept in fixed deposit in the joint names of the appellants for a period of five years on which monthly interest shall be paid to them but no loan, advance or withdrawal be permitted without the permission of the learned Tribunal.

9. The appeal is accordingly allowed and the award amount is enhanced from Rs. 1,80,000 to Rs. 3,75,000 along with interest at the rate of 7.5 per cent per annum.

10. Copy of this order be given dasti to learned Counsel for the parties under the signature of Court Master.

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