

NEW INDIA ASSURANCE CO. LTD.

v.

SATENDER AND ORS.

NOVEMBER 8, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Motor Vehicles Act, 1988—Sections 168 and 177—Compensation—Determination of, in case of death of child of tender age—Held: In view of uncertain future of a child, child's income cannot be assessed on estimated basis nor parent's financial loss can be computed mathematically—Compensation awarded should be 'just and reasonable'—Thus, instead of Rs. 4,45,000/- with interest @ 9% p.a., Rs. 1,80,000/- with interest @ 7.5% p.a. awarded from date of application till date of realization which would meet ends of justice.

Nine years old child was knocked down by a truck insured with the appellant, resulting in his death. Since the child was not earning, for the assessment of compensation notional income was taken as Rs. 30,000/-p.a. and considering the age of the parents, multiplier of 17 was adopted. Tribunal awarded sum of Rs. 4,45,000/- as compensation with interest at the rate of 9% p.a. Appellant-insurance company filed an appeal, which was dismissed. Hence, the present appeal.

Appellant-insurance company, owner of the offending vehicle and driver *inter alia* contended that the quantum of compensation fixed was unrealistic.

Allowing the appeal, the Court

HELD: 1.1. 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. Therefore, the question of assessment of compensation 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. [749-A-C]

A 1.2. In cases 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 **B** 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. [749-G-H; 750-A-B]

C 1.3. Applying the principle in **Jasbir Kaur's* case that the amount of compensation which is damages in real sense should appear to be just and reasonable, award of a sum of Rs. 1,80,000/- with interest at the rate of 7.5% from date of application till date of realization, would meet the ends of justice. [750-B-C]

D **State of Haryana and Anr. v. Jasbir Kaur and Ors.*, [2003] 7 SCC 484, relied on.

Mallett v. McMonagle, (1970) AC 166; *Davies v. Taylor*, (1974) AC 207; *Davies v. Powell Duffryn Associated Collieries Ltd.*, [1942] 1 All ER 657 and *Taff Vale Rly. v. Jenkins*, (1913) AC 1, referred to.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4725 of 2006.

From the final Order dated 5.10.2005 of the High Court of Delhi at New Delhi in MACA No. 810/2005.

Kishore Rawat and M.K. Dua for the Appellant.

F Kuldip Parihar and H.S. Parihar for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

G Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Delhi High Court in an appeal filed by the appellant. In the appeal, the quantum of compensation awarded to the respondents 1 and 2 by the Motor Accidents Claims Tribunal, Delhi (in short the 'MACT') was questioned.

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Factual background in a nutshell is as follows:

On 7.5.2002 a child—Anuj, aged about nine years was knocked down by a truck which was the subject matter of insurance with the appellant. As a result of the accident, said child died. A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') claiming compensation. The MACT found that the child was not earning and, therefore, the compensation has to be assessed on the basis of notional income. MACT referred to the second schedule to the Act and held that the notional income as per the said schedule is Rs. 15,000/- p.a., but the same was unrealistic. Accordingly the notional income was taken as Rs. 30,000/-p.a. After deducting 1/3rd towards personal expenses, the financial dependency of the parents was fixed at Rs. 20,000/- p.a. Considering the age of the parents, multiplier of 17 was adopted. The total financial dependency was calculated at Rs. 3,40,000/- for financial loss and a sum of Rs. 1,00,000/- was added for emotional loss and adding a sum of Rs. 5,000/- for funeral expenses a sum of Rs. 4,45,000/- was awarded as compensation with interest at the rate of 9% p.a. from the date of institution of the claim petition till payment. An appeal was filed before the Delhi High Court by the appellant which, by the impugned judgment, came to be dismissed.

Learned counsel for the appellant submitted that the quantum of compensation fixed is unrealistic. If MACT made a reference to the second schedule, it should have awarded the amount on the basis of the amount indicated in the schedule. By acting on mere surmises and conjectures, MACT should not have held that the notional income is to be taken at Rs. 30,000/- p.a.. Multiplier adopted is also on the higher side.

There is no appearance on behalf of the claimants-respondents 1 and 2 in spite of notice.

Learned counsel appearing for the owner of the offending vehicle and the driver supported the stand of the appellant-Insurance Company.

In *Mallett v. McMonagle*, (1970) AC 166, Lord Diplock analysed in detail the uncertainties which arise at various stages in making a rational estimate and practical ways of dealing with them. In *Davies v. Taylor*, (1974) AC 207, it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the

A necessity for compensating the real loss. But a practical approach to the calculation of the damages has been stated by Lord Wright in *Davies v. Powell Duffryn Associated Collieries Ltd.*, [1942] 1 All ER 657, in the following words:

B “The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required to be spent for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years’ purchase.”

C In *State of Haryana and Anr. v. Jasbir Kaur and Ors.*, [2003] 7 SCC 484 it was held as under:

D “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 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. The expression ‘just’ denotes equitability, fairness and reasonableness,

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and non-arbitrary. if it is not so it cannot be just. (See *Helen C. A Rebello v. Maharashtra SRTC*, [1999] 1 SCC 90)

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.

In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life-time. But this will not necessarily bar the parent's claim and prospective loss will find a valid claim provided that the parent's 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*, (1913) AC 1, 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 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 them." (See *Lata Wadhwa and Ors. v. State of Bihar and Ors.*, [2001] 8 SCC 197)

This Court in *Lata Wadhwa's* case (supra) 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 cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the

- A 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.

- C Applying the principles indicated in *Jasbir Kaur's* case (supra) to the facts of the present case we think award of a sum of Rs. 1,80,000/- would meet the ends of justice. The same shall carry interest at the rate of 7.5% from the date of filing of petition till payment is made. Payment shall be made within a period of three months from today. Amounts, if any, already paid shall be adjusted from the aforesaid amount of Rs. 1,80,000/-

The appeal is allowed to the extent indicated above. There will be no order as to costs.

- D N.J.

Appeal allowed.