

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO No. 207/2003

Judgment reserved on: 21.2.2009
Judgment delivered on: 27.4.2009

Phoolwati & Ors.

..... Appellants.

Through: Mr V P Chaudhary, Sr. Adv.
With Mr. Nintinjya Chaudhry,
Adv.

versus

KRS Panikar & Ors.

..... Respondents

Through: Shri A K De, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | NO |
| 2. To be referred to Reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

KAILASH GAMBHIR, J.

1. The present appeal arises out of the award dated 31.10.2002 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 2,00,000/- along with interest @ 9% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. On 21.9.1992 at around 9 PM, deceased Kushal Pal Singh aged about 14 years boarded the bus bearing registration No: DL 1P 1192 from Bhogal for going to Ashram. He was standing near the rear gate. When the bus was near the round about of Rajdoot Hotel, the driver of the bus tried to negotiate sharp turn without slowing down the speed and on account of the abrupt sharp turn at the round about at a high speed, the deceased Kushal Pal Singh who was standing in the bus by the side of the rear gate fell down of the moving bus, as a result of which he suffered fatal injuries to which he succumbed later on.

4. A claim petition was filed on 3.10.1996 and an award was passed on 31.10.2002. Aggrieved with the said award enhancement is claimed by way of the present appeal.

5. Mr. V.P. Chaudhary, Sr. Advocate for the appellants submitted that the tribunal erred in awarding Rs. 2,00,000/- as lumpsum compensation instead of applying multiplier method and assessing income of the deceased at Rs. 25,000/- after considering future prospects, and applying multiplier of 18 while computing compensation. The counsel also raised the contention that the rate of interest allowed by the tribunal is on the lower side and the tribunal should have allowed simple interest @ 15% per annum in place of only 9% per annum. The counsel contended that the tribunal has erred in not awarding compensation towards loss of love & affection, funeral expenses, loss of estate, mental pain and sufferings and the loss of services, which were being rendered by the deceased to the appellants.

6. Per Contra Mr. A.K. De, counsel for respondent insurance company submitted that there is no illegality in the impugned award. Counsel further contended that award passed by Tribunal is absolutely fair, just and reasonable and no fault can be found with the same.

7. I have heard learned counsel for the parties and perused the record.

8. The assessment of damages to compensate the dependants is beset with difficulties because while doing so, many imponderables have to be taken in to account, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by

multiplying it by a figure representing the proper number of year's purchase. In this relation, the Apex Court has held in plethora of judgments that the multiplier method is the best method.

9. In this regard in **G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176** the Hon'ble Apex Court observed as under:

"12. There were two methods adopted for determination and for calculation of compensation in fatal accident actions, the first the multiplier mentioned in *Davies case*³ and the second in *Nance v. British Columbia Electric Railway Co. Ltd.*

13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

16. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and award the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say 25 years of age at

the time of death and the life expectancy is 70 years, this method would multiply the loss of dependency for 45 years — virtually adopting a multiplier of 45 — and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are, aware that some decisions of the High Courts and of this Court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely instances of particular awards in individual cases. The proper method of computation is the multiplier-method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that Section 110-B of the Motor Vehicles Act, 1939 insofar as it envisages the compensation to be 'just', the statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary view. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases."

10. Thus, the tribunal erred in awarding a lumpsum amount to the appellants.

11. 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.

12. 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 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.

13. This case pertains to the year 1993 and at that time II Schedule to the Motor Vehicles Act was not brought on the statute books. The said schedule came on the statute book in the year 1994 and prior to 1994 the law of the land was as laid down by the Hon'ble Apex Court in **Lata Wadhwa and Ors. v. State of Bihar and Ors. – (2001) 8 SCC 197.**

14. In **Lata Wadhwa's case (supra)** while computing compensation, the Apex Court made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years. In the said case, the Apex Court had awarded Rs. 1,50,000/- as pecuniary damages and Rs. 50,000/- towards non-pecuniary damages to the claimants of the deceased children falling within the age group of 5 to 10 years and in case of the children falling within the age group of 10 to 15 years, the Court decided that the multiplier method should be applied and the contribution of the children to the family was taken to be at Rs. 24,000/-pa and then a multiplier of 15 was applied and over and above that the conventional compensation of Rs.50,000/- had been added to it, making the total compensation as Rs. 3,60,000/-.

15. In the light of the above discussion, I would assess the compensation in the instant case. It has come on record that the deceased at the time of the accident was of 14 years of age and was studying in VIII standard. The Pw1 father of the deceased deposed that the deceased was a healthy and an intelligent child and was to be given higher education. But nothing has come on record to prove the income of the deceased.

16. The tribunal should have atleast assessed the income as that of an skilled workman on the basis of the minimum wages notified under the Minimum Wages Act prevailing at the time of the accident i.e. at Rs. 1259/- pm.

17. Furthermore, it has been the consistent view of this court that whenever aid of Minimum Wages Act is taken while computing income, then increase in minimum wages should also be considered. It is well settled that future prospects are not akin to increase in minimum wages. To neutralize increase in cost of living and price index, the minimum wages are increased from time to time. A perusal of the minimum wages notified under the Minimum Wages Act show that to neutralize increase in inflation

and cost of living, minimum wages virtually double after every 10 years. For instance, minimum wages of skilled labourers as on 1.1.1980 was Rs. 320/- per month and same rose to Rs. 1,083/- per month in the year 1990. Meaning thereby, from year 1980 to year 1990, there there has been an increase of nearly 238% in the minimum wages. Thus, it could safely be assumed that income of the deceased would have doubled in the next 10 years.

18. Also, since in catena of cases the Apex Court has in similar circumstances made $1/3^{\text{rd}}$ deductions. Therefore, $1/3^{\text{rd}}$ deductions towards personal expenses is made.

19. Also, considering that this case pertains to the year 1992 and at that time II schedule to the Motor Vehicles Act had already been brought on the statute book. The age of the deceased at the time of the accident was 13 years and he is survived by his parents and the age of the father at the time of the accident was 45 years. In the facts of the present case I am of the view that after looking at the age of the claimants and the deceased and considering the multiplier applicable as per the II Schedule to the MV Act, the multiplier of 15 shall be applicable.

20. Also, compensation towards loss of love and affection is awarded at Rs. 20,000/-; compensation towards funeral expenses is awarded at Rs. 10,000/- and compensation towards loss of estate is awarded at Rs. 10,000/-.

21. On the basis of the discussion, the income of the deceased would come to Rs. 1,888.50/- after doubling Rs. 1,259/- to Rs. 2,518/- and after taking the mean of them. After making 1/3rd deductions the monthly loss of dependency comes to Rs. 1,259 and the annual loss of dependency comes to Rs. 15,108 per annum and after applying multiplier of 15 it comes to Rs. 2,26,620/-. Thus, the total loss of dependency comes to Rs. 2,26,620/-. After considering Rs. 40,000/-, which is granted towards non-pecuniary damages, the total compensation comes out as Rs. 2,66,620/-.

22. In view of the above discussion, the total compensation is enhanced to Rs. 2,66,620/- from Rs. 2,00,000/- with interest on the differential amount @ 7.5% per annum from the date of filing of the petition till realisation and the same shall be paid to the

appellants in equal proportion by the respondent no. 3 as directed by the tribunal and within 30 days of this order.

23. With the above directions, the present appeal is disposed of.

April 27, 2009

KAILASH GAMBHIR, J.