IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.311 of 2013

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1. Iffco Tokio General Insurance Company Limited, G.O.O. Gas 604, Anshal Imperial Tower, C- Block, Community Centre, New Delhi Registered Office- Iffco Sadan, C-1, District Centre, Saket New Delhi Through Its Senior Manager Legal And Constituted Attorney P. Ramesh Venugopal, 42a, Shakespeare Sarani, 3rd Floor, Flat No. 31, Express Tower, Kolkata.

.... Appellant/s

Versus

1. Raj Kumari Devi W/O Yogendra Manjhi Resident Of Village- Ghosrama, P.S- Pear, District- Muzaffarpur.
2. Yogendra Manjhi S/O Chaitu Manjhi Resident Of Village- Ghosrama, P.S- Pear, District- Muzaffarpur.
3. B.S.C.C. And C.J.V. Jai Plaja Clear Building, C 1/ Bold, DLF Colony, Gurgaon, Haryana (Owner of Vehicle)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. R.C.Narayan, Adv.
Mr. Sanjay Kumar Singh, Adv.

For the Respondent/s : Mr. Mukesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-08-2015

17.08.2015 Heard counsel for the appellants and the respondents.

As per office notes, there is delay of 5 months and 17 days in filing the appeal. As per the appellants the judgment was passed on 9th October 2012 and the award was prepared on 8th April 2013 and the appeal has been filed on 24th April 2013.

In view of the explanation, the delay in filing the appeal is condoned.

In this appeal the appellants are challenging the judgment dated 27th July 2012 and award dated 9th August 2012 by which the court below has given direction for payment of Rs.3,64,500/-, minus Rs.50,000/- which was adjusted on account of earlier payment, direction was given to pay Rs.3,14,500/-.

In this case, matter relates to vehicular accident of a child of 12 years which led to his death. As it appears from the record, on 29th April 2008 at 12.10 A.M. when the deceased Tullu Kumar was going by bicycle from Kanhara Raghu, Hanuman Mandir Road through Kachcha flank of the road, a dumper bearing Regd. No. BR 06G/ 2317 being driven rashly and negligently dashed him resultantly he died on the spot which led to institution of Bochaha P.S. Case No. 57 of 2008.

The Tribunal has recorded a finding that the driver was driving the said vehicle rashly and negligently and found that the claimants are entitled to compensation.

At the time of death the said boy was of 12 years and had no independent source of income, rather he was dependent on his parents. The Tribunal has taken notional income Rs.3,000/- per month and after deducting 1/3rd from the gross amount of Rs.2,400/- was fixed for the purpose of calculation of compensation and the multiplier '15'was multiplied for arriving to the award amount of Rs.3,64,500/-. Earlier Rs.50,000/- was paid and after deduction of the said amount, direction was given to pay Rs.3,14,500/-.

Counsel for the appellants submitted that the assessment is on the higher side as admittedly, the child was non-working/earning member of the family and he could not have contributed to the family substantially rather he himself was depended on his parents, considering that the compensation should not be on the notional income, the Tribunal has wrongly calculated the amount rather compensation should be as per the table attached to the M.V.Act, 1988, placing reliance on the case of Reshma Kumari v. Madan Mohan : (2013)9 SCC 65 as well as Puttamma v. K.L. Narayan Reddy (2013)15 SCC 45 whereas counsel for the respondents relied on the judgment in the case of Kishan Gopal v. Lala : (2014)1 SCC 244. It is well said that the child is the father of man. He is an asset to the country as well as to the parents. The love of child to parents cannot be compensated in terms of money. If a child is properly groomed he can excel at any height.

Counsel for the petitioner submitted that as per decision in the case of Reshma Kumari (supra), the court has it self prepared the table for the purpose of compensation, accordingly, compensation cannot be more than what has been provided therein. It will be appropriate to deal with Reshma Kumari case (supra). In that case the question was raised before the larger bench for the following issues:

Whether the multiplier specified in the second schedule appended to the Motor Vehicle Act 1988 should be scrupulously applied in all cases and

i) Ii) Whether for determination of the multiplicand, the M.V.Act provides for any criterion, particularly as regards determination of future prospects ?

Two questions were placed for consideration before the Hon'ble Supreme Court, as the Court found the conflicting judgments of the Hon'ble Courts. After dealing with all the aspects of the matter, ultimately the Hon'ble Supreme Court has taken note of inflation led to erosion of value of Indian currency, after 1988 Act was passed by the Parliament. The Court has said that tabular form is basically a guide line for computation of award confined its applicability to Section 163A of the Act. For Section 166, the court has said that it will not be applicable but the Court while giving ultimate consideration, in Para-35 has said that in Sarla Verma v. DTC(2009) 6SCC 121, table has already been prepared for selection of multiplier has been referred and application in SRTC v. Susamma Thomas, (1994)2 SCC 176 and New India Assurance Co. Lt d. v. Charle: (2005)10 SCC 720 for the claim made under Section 166 of M.V.Act 1988.

It will be relevant to quote Para 35 to 39 of Reshma Kumari case (supra) which are as follows:

35. We have already noticed the Table prepared in *Sarla Verma*[19] for the selection of multiplier. The Table has been prepared in *Sarla Verma*[19] having regard to the three decisions of this Court, namely, *Susamma Thomas*[2], *Trilok Chandra*[4] and *Charlie*[20] for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column (4) of the Table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the Table prepared in *Sarla Verma*[19] is that the uniformity and consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a "multiplier" to arrive at the loss of dependency.

36. In *Sarla Verma*[19], this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma*[19] that the claimants in case of death claim for the purposes of compensation must establish (*a*) age of the deceased; (*b*) income of the deceased; and (*c*) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (*i*) additions/deductions to be made for arriving at the income; (*ii*) the deductions to be made towards the personal living expenses of the deceased; and (*iii*) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*[19].

37. If the multiplier as indicated in Column (4) of the Table read with para 42 of the Report in *Sarla Verma*[19] is followed, the wide variations in the selection of multiplier in the claims of compensation in fatal accident cases can be avoided. A standard method for selection of multiplier is surely better than a criss-cross of varying methods. It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in *Sarla Verma*[19] for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in *Sarla Verma*[19] is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of [89] the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in *Sarla Verma*[19] should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in *Sarla Verma*[19] should be followed.

38. With regard to the addition to income for future prospects, in *Sarla Verma*[19], this Court has noted the earlier decisions in *Susamma Thomas*[2], *Sarla*

Dixit[3] and *Abati Bezbaruah*[8] and in para 24 of the Report held as under: (*Sarla Verma case*[19], SCC p. 134)

"*24.* … In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax'). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

39. The standardisation of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where

> the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future 90 prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.

Ultimately the proposition has been culled out in Para-43 of the judgment which shows that the Hon'ble Supreme Court in Reshma Kumari (supra)case has basically accepted the formula that has been provided in Sarma Verma case (supra) and this case does not deal with the situation when a child dies in motor accident, as such this case in respect of the present case does not apply.

With regard to Puttamma case (supra) the Court has also considered and prepared a table and in that judgment the question was not raised about compensation on account of death of a child rather in that case a major person had died who was earning Rs.13,331/- per month and the Court said that after deduction of tax amount received by the person concerned will be taken into consideration and after deduction, the High Court enhanced the compensation, split the multiplier applied multiplier 10 for the multiplicand of Rs.8295/- and multiplier 2 for multiplicand of Rs.4147/- granted compensation of Rs.11,25,000/-. The Hon'ble Supreme Court applied the principle laid down in Sarla Verma (supra) held, 1/3rd should be deducted for personal use but would vary on number of persons dependent on the deceased.

While dealing the judgment in Para-55, the Court has taken note of the letter dated 5th December 2012 of the Joint Secretary, Ministry of Road Transport and Highways, New Delhi where the bill was introduced to substitute Section 163-A(3) of the Act by empowering the Central Government to revise the amount or the multiplier specified in the Second Schedule alternating every three years, the Bill also seeks to substitute the Second Schedule so as to provide, for death of non-earning member a fixed compensation of Rs.1,00,000/- for children upto 5 years of age and Rs.1,50,000/- for member more than 5 years of age. It will be relevant to quote Para-55 and 58 of the judgment which are as follows:

"**55.** A Letter dated 5-12-2012 issued by the Joint Secretary, Ministry of Road Transport and Highways, New Delhi has been brought to our notice by Mr P.P. Malhotra. Giving reference to the present case therein, the officer has informed that the Motor Vehicles (Amendment) Bill, 2012, inter alia, to amend Section 163-A of the Motor Vehicles Act, 1988 was passed by the Rajya Sabha on 8-5-2012. The said Bill proposes to substitute Section 163-A(3) of the Act by empowering the Central Government to revise the amount or the multiplier specified in the Second Schedule after every three years and furthermore, the Bill also seeks to substitute the Second Schedule so as to provide that for death of non-earning persons, a fixed compensation of Rs 1,00,000 for children up to 5 years of age and Rs 1,50,000 for persons more than 5 years of age. It is informed that though the Bill has been passed by the Rajya Sabha it is still pending consideration before the Lok Sabha for its approval.

58. The Central Government was bestowed with duties to amend the Second Schedule in view of Section 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 directions to the Central Government through the Secretary, Ministry of Road Transport and Highways to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of the Second Schedule as proposed or may be made by 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

Section 163-A of the 1988 Act or amendment is made by Parliament, we hold and direct that for children up to the age of 5 years shall be entitled for a fixed compensation of Rs 1,00,000 (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs 1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of the Second Schedule whichever is higher. Such amount is to be paid if any application is filed under Section 163-A of the 1988 Act".

That judgment is basically not dealing with the death of a child but it is mere consideration of bill introduced in the Parliament. The Court fixed compensation for Rs.1,00,000/- for a child upto 5 years and child more than 5 years, held entitled to compensation of Rs.1,50,000/-. It is well known principle of law that the binding president will be that when the issue is raised and the same was decided not the every observation of the court.

The issue of death of a child came for consideration before the Hon'ble Supreme Court in the case of Kishan Gopal v. Lala (2014)1 SCC 244 where the Court has taken into consideration the judgments given in the case of Lata Wadhwa v. State of Bihar: (2001)8 SCC 197, in that case TISCO had organized some function in which the accident took place, large number of persons, including minor received fatal injuries and died. The question came for consideration before the Hon'ble Supreme Court for grant of compensation. The Hon'ble Supreme Court has taken into consideration different facts such as , the status of parents, standard of their living and the future prospect of the child and arrived to the conclusion that each parent should be given Rs.2,00,000/- only. The Court has taken the guidelines and said that notional income of Rs.15,000/- will not be proper notional income was substituted by Rs.30,000/- on account of erosion in the value of Rupees took multiplier 15 and added Rs.50,000/- under conventional head towards loss of love, affection, funeral expenses and last rites expenses and granted compensation of Rs.5,00,000/-. It will be relevant to quote Para- 35 to 39 of the judgment (Kishan Gopal)..

35. The relevant portion of Clause 6 states as under:

"**6.** Notional income for compensation to those who had no income prior to accident—

* * *

(*a*) Non-earning persons — Rs 15,000 p.a."

The aforesaid clause of the Second Schedule to Section 163-A of the MV Act, is considered by this Court in *Lata Wadhwa* v. *State of Bihar*[6] while examining the tortious liability of the tortfeasor has examined the criteria for awarding compensation for death of children in accidents between the age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs 12,000 p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs 25,000 was awarded. Thus, a total sum of

Rs 1,57,000 was awarded in that case.

36. After noting the submission made on behalf of TISCO in *Lata Wadhwa case*[6] that the compensation determined for the children of all age groups could be double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times. In other words, it should be Rs 1.5 lakhs to which under the conventional heads a sum of Rs 50,000 should be added and thus total amount in each case would be Rs 2 lakhs.

37. Further, in *Lata Wadhwa case*[6] it was observed that insofar as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs 12,000 p.a. appears to be on the lower side and held that the contribution of such children should be Rs 24,000 p.a.

38. In our considered view, the aforesaid legal principle laid down in *Lata Wadhwa case*[6] with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years 257old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs 15,000. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard.

39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs 30,000 and further taking the young age of the parents, namely, the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in *Sarla Verma* v. *DTC*[7], the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 × 15 = 4,50,000 and 50,000 under conventional heads towards loss of love and affection, funeral expenses, last rites as held in *Kerala SRTC* v. *Susamma Thomas*[8], which is referred to in *Lata Wadhwa case*[6] and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs 50,000 under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.

In the facts and circumstances of the case, this Court is of the view that now Rs.15,000/- has lost its weight on account of erosion in money value, it will be proper to raise to Rs.30,000/- as notional income considering the fact that a person will earn Rs.100/- per day .

In (2008)13 SCC 165 (Lakshmi Devi. V. Md. Tabbarf) the Hon'ble Supreme Court has dealt with notional income of earning member will be Rs.100/- per day when earning of person is not on record. Hence, the Court has taken Rs.100/- as notional income for calculation of compensation amount. This Court, in view of Lala case (supra), does not find any error in the impugned judgment. This appeal is, accordingly, dismissed.

The statutory amount deposited in this Court will be remitted to the court below and the same will be paid to the claimants that will be adjus ted against the computed amount.

(Shivaji Pandey, J)

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