

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.591 of 2012

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1. Ashok Sao S/o Sri Chandrika Sao, resident of village-Wena, P.O.+P.S.- Wena, District- Nalanda.
 2. Kumkum Devi W/o Ashok Sao, resident of village-Wena, P.O.+P.S.- Wena, District- Nalanda.

.... Appellant/s

Versus

1. Ram Naresh Prasad S/o Ram Sagar Mistri, owner of Truck No. BPA-6315, village- Radhapur, P.O. + P.S.- Bakhatiyarpur, Distt.-Patna.
2. New India Assurance Co. Ltd. through the Branch Manager, LIC Building, Ranchi Road Bihar Sharif, District- Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : M/s Rabi Bhushan Prasad No. 1 and Jwala Prasad, Advs.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-06-2015

Heard learned counsel for the appellants and learned counsel for the respondents.

In this case, appellants who are claimants, have come before this Court for enhancement of the compensation amount.

The claim of the appellants is that Manoj Kumar Pandey, along with victim Guriya Kumari and other children of the village were going to the school by the side of the road, on 6th January 1997, at 10.10 A.M., when they arrived at Bihar-Baktiyarpur road, a truck bearing Regd. No. BPA 6315, dashed against deceased Guriya Kumari as the driver was plying the truck in rash and negligent manner which led to death of the victim, Guriya Kumari.

The case was instituted as Wena P.S. Case No. 3 of 1997 for offences under sections 379, 338 and 304A of the Indian Penal Code. After investigation, the incident was found to be true and accordingly, charge sheet No. 4 of 1997 was submitted.

At the time of accident, victim Guriya Kumari was aged 9 years, was school going child and as such, she had no income but claim has been made that, had there been no accident, she would have survived for 75 years, as the family tradition is higher longevity and as such, the claimants are entitled to suitable compensation.

At the time of accident, the truck driver, Surendra Prasad was holding valid license and the truck was insured during the relevant period.

On filing of the claim case, Rs. 50,000/- has already been paid to the complainant.

The Insurance Company appeared and resisted the claim of the appellants, one of the points was taken that the claim case was filed after the long delay, the truck driver was not made a party and it suffers from non-impleadment of the necessary party. Other incidental point has been taken of not verified and signed by the competent person.

The Tribunal arrived to a finding that the truck bearing

Regd. No. BPA 6315 was under the insurance during the relevant period and the truck driver was plying the truck in rash and negligent manner, crushed the victim girl and as such, the claimants are entitled to compensation and liability has been fixed to the Insurance Company amounting to Rs. 1,62,000/-.

Counsel for the appellants submits that the amount that had been fixed, is on lower side as the court has taken traditional amount of money of non-earning persons, of Rs. 15,000/-, whereas it should have been double amount i.e. Rs. 30,000/-. As the incident is of 1997, the value of money has drastically eroded and has placed reliance on the judgment of Kishan Gopal and another Vs. Lala and others (2014) 1 SCC 244 where the Court has considered the case of *Lata Wadhwa v. State of Bihar, reported in (2001) 8 SCC 197* and arrived to a conclusion that money value has gone down drastically. Notional earning amount should be made double, it should be Rs. 30,000/- and Rs. 50,000/- under conventional head should be added towards loss of love affection, funeral expenses and last rights, taking into account the earlier judgment of the Hon'ble Supreme Court, namely, *General Manager, Kerala S.R.T.C. v. Susamma Thomas, reported in (1994) 2 SCC 176*. The counsel for the Insurance Company resisted the argument submits that the accident had taken



place in the year 1997, at the relevant time Rs. 15,000/- was prevalent as notional earning amount for the purposes of calculation of compensation for non-earning persons, as the victim girl was of only 9 years contributing nothing to the family so the Tribunal has rightly taken Rs. 15,000/- as the notional amount and subtracting 1/3rd thereafter made calculation cannot be said to be bad in law and placed reliance on the judgment reported in **2009 (4) PLJR 20 (Smt. Binda Devi v. Smt. Pushpa Khanna)** where the Court, in a similar situation, has taken the notional earning of Rs. 15,000/- and made a calculation, on that basis, particularly relied upon paragraph 11 of the said judgment.

As per the Motor Vehicle Act, the tabular formula has been attached for convenience to calculate the compensation amount but in course of time, lost its efficacy, which led to deviation in policy which is apparent from *Lata Wadhwa v. State of Bihar* (supra) and later on, **in (2009) 6 SCC 12, Sarla Verma v. DTC case**, the Hon'ble Supreme Court has taken into consideration erosion of value of money and framed the tabular formula of its own for the purposes of calculation of compensation amount .

The identical issue has come for consideration before this Court in *Kishan Gopal vs. Lala* (supra) where a boy of 10 years

was killed in a motor vehicle accident, there the Court has refrained from taking traditional notional income of Rs. 15,000/- and made it double for the purposes of calculation. It will be proper to quote paragraphs 35 to 40 of the said judgment, are as follows:-

Para 35 “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 M.V. Act, is considered by this Court in Lata Wadhwa v. State of Bihar while examining the tortuous liability of the tortfeasor has examined the criteria for awarding compensation for death of children in accident between 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.

Para 36 After noting the submission made on behalf of TISCO in Lata Wadhwa case 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.

Para 37 Further, in Lata Wadhwa case 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.

Para 38 In our considered view, the aforesaid legal principle laid down in Lata Wadhwa case 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' old, 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.

Para 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 the case of Sarla Verma v. Delhi Transport Corporation[3], the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas[4], which is referred to in Lata Wadhwa's case 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.

Para 40 The said amount will carry interest at the rate of 9% p.a. by applying the law laid down in the case of Municipal Council of Delhi v. Association of Victims of Uphaar Tragedy[5], for the reason that the Insurance Company has been contesting the claim of the appellants from 1992-2013 without settling their legitimate claim for nearly about 21 years, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept

in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Therefore, awarding 9% interest on the compensation awarded in favour of the appellants is legally justified.”

If the formula has been provided in *Kishan Gopal vs. Lala (supra)*, Rs. 15,000/- notional amount is made to Rs.30,000/- and as per the judgment of the Hon’ble Supreme Court, Rs. 50,000 amount under the conventional heads for loss of love and affection, funeral expenses, last rites will also be added, the amount comes to Rs. 5,00,000/-.

Whatsoever the amount is already paid will be subtracted and the rest amount would be paid by the Insurance Company within a period of three months from the date of receipt/production of a copy of this order.

Accordingly, the order dated 28th April 2012 is modified to the aforesaid extent. The Insurance Company, except Rs. 15,000/- has not paid as it is a case of 1997 as such, looking to the period, the appellants is also entitled to the interest from the date of filing of the application.

Accordingly, this petition is allowed.

(Shivaji Pandey, J)

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