

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.73 of 2014

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1. FULA DEVI W/O SUDARSHAN RAM
2. SUDARSHAN RAM S/O BISHUNI RAM
RESIDENT OF VILLAGE- BISHRAMPUR, P.O- CHHOTAKI CHENARI,
P.S- SHEOSAGAR, (BADDI), DISTRICT- ROHTAS
.... APPELLANT/S

VERSUS

1. MITHILESH KUMAR SINGH S/O SRI HARI SHANKAR SINGH
2. KAMLESH KUMAR SINGH S/O SRI HARI SHANKAR SINGH
BOTH RESIDENT OF VILLAGE NEW, P.O- NAAD, P.S- SHEOSAGAR,
DISTRICT- ROHTAS.
(OWNER OF MAHINDRA COMMANDER JEEP BEARING NO.BR-45A/0125)
3. BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD., CIVIL
LINE, G.T. ROAD, SASARAM, ROHTAS.
(INSURER OF MAHINDRA COMMANDER JEEP BEARING NO. BR-45A/0125).
(OPP. PARTY NO.-4 IN THE CLAIM CASE).

.... RESPONDENT/S

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Appearance:

For the Appellant/s : MR. RAJEN SAHAY, ADV.
For Respondent No.1 & 4 : MR. ROHIT KUMAR, ADV.
For Respondent No.4 : MR. DURGESH KUMAR SINGH, ADV.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 03-08-2016

Claimants are the appellants. They are aggrieved by the quantum of compensation granted by the learned tribunal on account thereof, have challenged the judgment dated 08.10.2012 and award dated 04.06.2013 passed by First Additional District Judge-cum-Motor Accident Claims Tribunal, Rohtas at Sasaram in M.V. Claim Case No.79 of 2010 whereby and whereunder a meager amount of Rs.1,54,500/- has been identified to be the claim amount along with interest at the rate of Rs.6% per annum. The amount to paid in lieu of Section 140 of the M.V. Act has been directed to be deducted from

the aforesaid amount.

2. Kanchan Kumari, deceased aged about 10 years was knocked down by a commander jeep bearing registration no.BR-45A/0125 on 15.07.2009 at about 01:00 PM while was being rashly and negligently driven by its driver whereupon she died at the spot. Sheosagar (Baddi) P.S. Case No.138 of 2009 was registered under Section 279, 304 of the IPC against the driver of the Mahendra Jeep. It has also been averred that at the time of death of deceased who was only daughter of her parents was a student of Class-IV having bright shining future. On account thereof, claim case was filed before the tribunal impleading the owner, driver as well as insurance company.

3. Driver as well as owner of the commander jeep have not appeared, while the insurance company appeared and filed WS wherein apart from raising ornamental objection controverted the averments whatever been made in the petition. Furthermore, the vehicle being insured at its end at the relevant time has also been admitted. The insurance company further pleaded protection in terms of Section 149 of the MV Act.

4. It is also evident from the record that vide order dated 19.08.2013 petition under Section 170 of the MC Act filed on behalf of insurance company had also been allowed.

5. On the rival pleading the learned tribunal had framed following issues:-

1) Whether the claim petition as filed is legally

maintainable?

- 2) Whether the accident took place on 15.07.2009 at 06.30 p.m. near Jeep Stand of Makardah, P.S.-Sheosagar (Baddi), District-Rohtas due to rash and negligent driving of the driver of jeep bearing registration no.BR-45A/0125 and Kanchan Kumari died on the spot in the said accident?
- 3) Whether the claimants are entitled to get compensation as prayed for if yes from whom?
- 4) Whether the claimants are entitled to any other relief or reliefs?

And decided the same ultimately allowed the claim petition. While deciding the issue no.3, the learned tribunal had accepted the notional income that of Rs.15,000/- and deducting 1/3rd therefrom and further applying the multiplier to 15, as well as giving the loss of estate, funeral expenses to a tune of Rs.2500, Rs.2000, respectively, identified the claim amount to be that of 1,54,500/-. As the claimants have already received Rs.50,000/- under Section 140 of the MV Act therefore, the aforesaid amount was directed to deducted and so, the insurance company has been directed to pay Rs.1,04,500/- incurring 6% interest per annum from the date of filing of claim petition till the final payment.

6. It has been submitted on behalf of appellant that the finding recorded by the learned tribunal with regard to claim amount



by way of identifying the notional income to the extent of fifteen thousand happens to be incorrect in view of the law laid down by the Hon'ble Apex Court in ***Kishan Gopal & Anr. Vs. Lala & Ors.*** reported in ***(2014) 1 SCC 244***. In likewise manner it has also been submitted that learned lower court had erred in granting Rs.2000/- in lieu of funeral expenses as well as Rs.2500/- in lieu of loss of estate. It has further been submitted that the aforesaid finding relating to quantum of claim is liable to be interfered with and be enhanced under umbral of principle laid down by the Hon'ble Apex Court in ***Kishan Gopal (Supra)*** case.

7. At the other end, the learned counsel representing the insurance company resisted the submission made on behalf of appellant and has submitted that Kishan case has got no applicability in the present case after having subsequent judgment ***Puttamma Vs. K.L. Narayana Reddy*** reported in ***(2013) 15 SCC 45***. So submitted that the quantum of compensation is to be determine as directed under the Puttamma case (supra) and not under the Kishan case. Furthermore, it has also been submitted that the learned tribunal had rightly and properly considered as well as granted the claim amount whereupon should not be disturbed.

8. Admittedly Puttamma reported in ***(2013) 15 SCC 45*** has been decided after Kishan case. After going through the judgment of Puttamma case, it is evident that no principle/guideline has been laid down with regard to identification of mode of calculation of claim



relating to minor. However, the court took into consideration the lapses having on the part of the State in properly amending the second schedule of Section 163A of the Motor Vehicle Act as, by efflux of time, it became irrational as well as redundant on account of depreciation of money, inflation, increasing the cost of living coupled with enhancement of life expectancy. At that very moment, a letter dated 05.12.2012 was also placed before the Hon'ble Apex Court at the end of Union of India and the same has been incorporated under para-54 wherefrom it is evident that a bill was proposed to be placed where under clause 2-1(ii), a fixed amount of Rs.1,50,000/- for persons more than five years of age (non earning) with minimum amount payable Rs.1 lac is found payable but the aforesaid bill up till now has not seen light and that being so, the respondent, insurance company is not going to be benefited.

9. Now, the presence of Kishan Gopal reported in **(2014) 1 SCC 244** is found duly acknowledgeable as well as enforceable. The relevant para thereof, is quoted below:-

“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* (2001) 8 SCC 197 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* (2001) 8 SCC 197 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* (2001) 8 SCC 197 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* (2001) 8 SCC 197 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.

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 (2009) 6 SCC 121*, 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 (1994) 2 SCC 176*, which is referred to in *Lata Wadhwa case (2001) 8 SCC 197* 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.

40. The said amount will carry interest @ 9% p.a. by applying the law laid down in *MCD v. Uphaar Tragedy Victims Assn. (2011) 14 SCC 481*, 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.

41. Accordingly, we pass the following order:

41.1. The appeal is allowed and the impugned judgments and awards of both the Tribunal and High Court¹ are set aside.

41.2. The awarded amount of Rs 5,00,000 with interest @ 9% per annum should be paid to the appellants from the date of filing of the application till the date of payment.

41.3. We direct the Insurance Company to issue the demand draft drawn on any nationalised bank by apportioning the compensation amount equally with proportionate interest and send it to the appellants

within six weeks from the date of receipt of a copy of this judgment.”

10. From the L.C. record it is evident that mother of deceased namely Fula Devi happens to be aged about 32 years. Deceased was only issue of her parents. It is evident that she was contributing in the family by her active involvement. In the aforesaid background, no one would expect had she been alive would have contributed much more to the family.

11. On account thereof, the judgment and award impugned relating to quantum of claim amount needs re-appreciation as well as modification. Hence the award amount is identified as Rs.5 lacs with interest at a rate of 9% per annum from the date of filing of the application till the date of final payment deducting the amount, if any, already paid. Consequent thereupon, appeal is allowed. However in the facts and circumstances of the case, parties will bear their own cost.

(Aditya Kumar Trivedi, J.)

PN/-

AFR/NAFR	AFR
CAV DATE	15.07.2016
Uploading Date	04.08.2016
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