

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

First Appeal No. 330 of 2019
(The National Insurance Company Ltd. Through its Regional Manager,
Nagpur .vs. Devidas Sakharam Bhagat and others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. C.A. Anthony, Advocate for Appellant
Mr. K.S. Narwade, Advocate for Respondent Nos. 1 & 2.

CORAM : Manish Pitale, J.
DATED : August 22, 2019.

The appellant- Insurance Company has approached this Court challenging judgment and order dated 16.04.2015 passed by the Motor Accident Claims Tribunal, Buldana, whereby claim petition filed by respondent nos. 1 and 2 was allowed and compensation to the tune of Rs.5,00,000/- along with interest at the rate of 9 % P.A. was granted from the date of filing of claim petition till realisation of the entire amount.

2. The claim petition was filed by the respondent nos. 1 and 2 for the reason that their son met with an accident on 24.12.2009 when he was crushed by a container, while crossing the road. There is no dispute about the fact that the age of the deceased child at the time of accident was 5 years. The Tribunal took into consideration the evidence and material on record and it came to the conclusion that the accident had taken place due to the rash and negligent manner in which the container was driven.

3. By applying the existing position of law, the Tribunal applied the relevant multiplier and came to the conclusion that a total amount of Rs.5,00,000/- was just and fair compensation to the respondent nos. 1 and 2.

4. Mr. Anthony, the learned counsel appearing for the appellant-Insurance Company submitted that the Tribunal had committed an error in calculating the quantum of compensation and reliance placed on judgment of the Hon'ble Supreme Court in the case of **Kishan Gopal .vs. Lala** reported in **(2014) 1 Supreme Court Cases 244**, was misplaced. It was pointed out that the position of law as enunciated by the Hon'ble Supreme Court in the case of **Lata Wadhwa .vs. State of Bihar** reported in **(2001) 8 Supreme Court Cases 197** followed in subsequent judgments of the Hon'ble Supreme Court and the various High Courts, indicated that the quantum of compensation granted by the Tribunal in the present case was exaggerated. According to the learned counsel, upon proper application of the position of law and the Schedules specified in the Motor Vehicles Act, 1988, the amount of compensation payable would work out to a maximum of about Rs.2,40,000/-.

5. On the other hand, Mr. K.S.Narwade, learned counsel appearing for respondent nos. 1 and 2, pointed out to this Court that the Hon'ble Supreme Court in the case of **Kishan Gopal .vs. Lala** (supra) had taken into consideration earlier judgments, including the judgment

in the case of **Lata Wadhwa .vs. State of Bihar** (supra), to conclude that in the case of minor, while applying the multiplier of 15, the notional income could be taken as Rs.30,000/- instead of Rs.15,000/- for non-earning member as specified in the Schedule to the aforesaid Act. The Hon'ble Supreme Court had taken judicial notice of the fact that the value of the rupee had come down drastically from the year 1994, when the Schedule had been fixed. On this basis, it was contended that there was no substance in the present appeal.

6. Heard learned counsel for the rival parties and perused the material on record.

7. The point that arises for consideration in this appeal is as follows:-

“Whether the quantum of compensation granted by the Tribunal in the present case was justified?”

8. In the present case, there is no dispute about the fact that the age of the deceased child was 5 years at the time of the accident. There is no serious challenge to any other aspect of the order of the Tribunal, except the manner in which the quantum of compensation was calculated. The learned counsel for the appellant placed much emphasis on the judgment of the Hon'ble Supreme Court in the case of **Lata Wadhwa .vs. State of Bihar** (supra), as also subsequent judgments wherein the ratio of the said judgment was followed. It was emphasized that in the

present case the age of the deceased child was only 5 years, while in the judgments relied upon by the learned counsel for the appellant as well as the learned counsel for the respondent nos. 1 and 2, the age of the children was found to be well above 5 years and that this was a crucial factor which the Tribunal in the present case failed to consider. It was emphasized that there could be no deviation from the Schedule as appended to the said Act and that upon a proper application of the Schedule and the relevant material, it was evident that the compensation granted by the Tribunal was not sustainable and that it was required to be scaled down appropriately.

9. There can be no dispute about the fact that in the case of **Lata Wadhwa .vs. State of Bihar** (supra), the Hon'ble Supreme Court did hold that amount of compensation payable at Rs.2,00,000/- would be a reasonable figure and that this included the amount under conventional heads being fixed at Rs.50,000/-. It is also noted that in subsequent judgments wherein reference was made to the aforesaid judgment of the Hon'ble Supreme Court, similar amounts were granted. But, in the case of **Kishan Gopal .vs. Lala** (supra), upon which the learned counsel for the respondent nos. 1 and 2 has placed heavy reliance, while specifically referring to and applying the ratio of the judgment in the case of **Lata Wadhwa .vs. State of Bihar** (supra), the Hon'ble Supreme Court has fixed compensation at Rs.5,00,000/-. While doing so, the Hon'ble Supreme Court has taken judicial notice of the fact that value of

the rupee has come down drastically from the year 1994, when the notional income of a non-earning member was fixed at Rs.15,000/-. What is crucial is that the Hon'ble Supreme Court in the said judgment has also emphasized on the aspect that the deceased child, had he been alive would have certainly contributed substantially to the family of the claimant by working hard. This applies with full force to the facts of the present case also.

10. The distinction sought to be made by the learned counsel for the appellant that in the case of **Kishan Gopal .vs. Lala** (supra), the Hon'ble Supreme Court was considering the case of children whose age was ranging between 10 to 17 years and that they belonged to families that were affluent as compared to the respondent nos. 1 and 2 herein, is a distinction which is artificial in nature and it cannot be sustained in the eyes of law. The potential of the child in the present case who died at the tender age of 5 years in the accident, cannot be held to be any less than that of the child belonging to another family and the principle to be applied, as laid down in the case of **Kishan Gopal .vs. Lala** (supra), has to be applied uniformly.

11. The submission made on behalf of the appellant that there should be some deduction after calculating the notional income also deserves to be rejected because no such principle has been laid down in the aforesaid judgment of the Hon'ble Supreme Court in the case of **Kishan Gopal .vs. Lala** (supra). The

quantum granted under the conventional heads also deserves no interference because the amount of Rs.50,000/- has been granted consistently under such heads, in the judgments of the Hon'ble Supreme Court, while considering the case of compensation for the death of a minor.

12. Consequently, the point framed above, is answered in the affirmative and the appeal is dismissed.

13. Consequently, the amounts deposited by the appellant- Insurance Company before the Tribunal as well as this Court, are permitted to be withdrawn by the respondent nos. 1 and 2, along with accrued interest thereon.

JUDGE

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