

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

FIRST APPEAL NO.1284 OF 2008

APPELLANTS

(Original Claimant On R.A.)

- : **1.** Sau. Meena w/o. Shantilal Jain,
Aged about 34 years, Occu:
Household work
- 2.** Shatilal s/o. Jaswantlal Jain,
Aged about 36 years, Occu:
Business
- Both r/o. Sindola, Tq. Wani, Dist.
Yavatmal

..VERSUS..

RESPONDENTS

(Original N.A.s on R.A.)

- : **1.** Sanjay s/o. Shrikuderam Rangi,
Aged about 31 yrs, R/o-66,
Rajdhani Park, Nagloi, New Delhi.
- 2.** Brijendersingh s/o. Lateshsingh,
Aged about-Major,
r/o. V.C.P.L.C. 14, Nandgaon, W.C.L.
Colony, Chandrapur, Tq. & Distt.
Chandrapur.
(Owner of Tanker bearing No.MH-34394 involved in
the Accident)
- 3.** The National Insurance Co. Ltd.
Through its Branch Manager,
The National Insurance Co. Ltd.,
Office at Opp. Zilla Parishad Office,
Up to the Bank of India,
Chandrapur, Tq. & Distt.
Chandrapur.
(Insured vide Policy
No.281801/31/05/3600012131
Policy valid from 24.11.2005 to
23.11.2006)

Shri. Gaurav Khod, Advocate for Appellants.

CORAM: M. S. SONAK, J.

DATE: 08/12/2021.

JUDGMENT

Heard the learned Counsel Shri. Gaurav Khod for Appellants. The Respondents are duly served, but they are neither present nor represented. Since this is an Appeal of the year 2008, there is no point in adjourning the same any further.

2. The challenge in this Appeal is to the judgment and Award dated 22.04.2008 made by the Motor Accident Claim Tribunal, Kelapur (Tribunal) awarding the Appellants compensation of only Rs.1,00,000/- (Rs. One Lac only) as against the claimed amount of Rs.2,50,000/- for the unfortunate demise of the Appellant's 14 years old daughter in a vehicular accident.

3. Shri. Gaurav Khod, the learned Counsel for Appellant submits that the Tribunal erred in holding that a minor girl has no future prospects and compensation of not more than Rs.1,00,000/- can be awarded. He submits that in ***Santosh Rani ..vs.. Ranjit Singh and others., 2008 ACJ 1405***, the Hon'ble Supreme Court awarded compensation of Rs.2,50,000/- in case of death of a 13

years old child to his mother. He submits that in such facts wide discretion is available to the Tribunal and some amount of guesswork is also permissible. He relies on ***National Insurance Company Limited ..vs.. Kusuma and another, (2011) 13 SCC 306, New India Assurance Co. Ltd. ..vs.. Satender and others, (2006) 13 SCC 60, M. S. Grewal and another ..vs.. Deep Chand Sood and Ors. (2001) 8 SCC 151 and Lata Wadhwa and others ..vs.. State of Bihar and others, (2001) 8 SCC 197***, in support of his submission that the claimed amount of compensation of Rs.2,50,000/- should have been awarded in the present case.

4. I have considered the aforesaid submissions made by Shri. Gaurav Khod, the learned Counsel, perused the record and the impugned judgment and order.

5. The Tribunal, in this case, has only relied upon the decision in ***Kaushlya Devi ..vs. Shrikaran Arora, 2007 (3) T.A.C. 16 (16)***, in which it was held that since the future of a minor child cannot be determined, compensation cannot be more than Rs.1,00,000/-. Based on this decision, the Tribunal disposed of the claim petition by awarding compensation of Rs.1,00,000/- to the parents of the deceased Khushbu. Having regard to the

facts as borne out from the record as well as the legal position discussed hereafter, the Award of only Rs.1,00,000/- is indeed paltry and warrants interference.

6. There is evidence on record that the deceased Khushbu was going to her school on her bicycle with her friend Sharda Dhawas on 13.05.2003 when the offending vehicle i.e. Tanker No.MH-34-M/394 came from the opposite direction in a rash and negligent manner violently knocked Khushbu down. The front wheel of the Tanker passed over her and crushed her. She was studying in 9th Std. and it was pleaded that she was a brilliant student.

7. From the evidence on record, there is no dispute whatsoever about either the involvement of the Tanker in the accident or the fact that the accident took place on account of the rash and negligent driving of the driver of the Tanker. The only issue involved in this Appeal is about the quantum of compensation payable to the parents of the deceased Khushbu, whose precious life ended in such a violent manner on the roadside.

8. In *Santosh Rani* (supra), both the Tribunal and the High Court awarded compensation of Rs.50,000/- for

the death of 13 years old child. The Hon'ble Supreme Court held that "both the Tribunal and the High Court completely ignored the factum of loss of life at tender age, the future prospect of the young man and mental agony suffered by the claimant (mother)." The Hon'ble Supreme Court after noting that Award of Rs.50,000/- was too meager, enhanced the same to Rs.2,50,000/-.

9. In *Lata Wadhwa* (supra), one of the issues considered by the Hon'ble Supreme Court concerned the determination of compensation payable to the parents in case of the death of the children in the accident. The Hon'ble Supreme Court held that "for children aged between 10 to 15 years, compensation of Rs.4.10 lakhs would be appropriate". This was after considering the position that the TISCO had a policy of giving employment to the children of the employees.

10. In *M. S. Grewal* (supra), the Hon'ble Supreme Court approved the award of compensation of Rs.5,00,000/- to the parents of the students, who died of drowning at a school picnic on the bank of River Beas in the year 1995.

11. *Satender* (supra) was a case arising from a claim for compensation under Section 166 of the Motor Vehicles Act, 1988 for the death of Anuj aged 9 years, who was knocked down by a Truck on 07.05.2002. The Hon'ble Supreme Court awarded compensation of Rs.1,80,000/- together with interest at the rate of 7.5% per annum. The Hon'ble Supreme Court at Paragraphs 9 to 12 observed as follows :

9. “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. In cases, where parents are claimants, relevant factor would be age of parents.

10. In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's

lifetime. But this will not necessarily bar the parents' claim and prospective loss will find a valid claim provided that the parents establish that they had a reasonable expectation of pecuniary benefit if the child had lived. This principle was laid down by the House of Lords in the famous case of *Taff Vale Rly. V. Jenkins* (1913) AC 1, and Lord Atkinson said thus:

".....all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first that the deceased earned money in the past, and, second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can I think, be drawn from circumstances other than and different from them." (See [Lata Wadhwa and Ors. v. State of Bihar and Ors.](#) (2001 (8) SCC 197)

11. This Court in Lata Wadhwa's case (supra) while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.

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.”

12. Having regard to the aforesaid rulings of the Hon’ble Supreme Court and taking into consideration that the accident, in this case, took place in the year 2005, the compensation of Rs.2,50,000/- as claimed by the Appellants represented “just compensation”. In the case of *Satender* (supra), the child was about 9 years old at the time of the accident. In the present case, Khushbu was 14 years old at the time of the accident. In *Lata Wadhwa* (supra), the Hon’ble Supreme Court approved the distinction to the children between 5 to 10 years and 10 to 15 years and awarded greater compensation to the latter

group. Besides, *Satender* (supra) was concerned about the accident that took place in the year 2002 and the accident in the present case took place in the year 2005. In *Santosh Rani* (supra), though the accident took place in the year 1993, compensation of Rs.2,50,000/- was awarded by the Hon'ble Supreme Court for the death of 13 years old son of the claimant. Even in *M. S. Grewal* (supra) here the accident took place in the year 1995, the Hon'ble Supreme Court approved the compensation of Rs.5,00,000/- awarded to the students, who drowned in the River Beas. Having regard to this march of law, the Tribunal was not justified in restricting the compensation to only Rs.1,00,000/-

13. For all the aforesaid reasons, this appeal is allowed and the compensation amount is enhanced from Rs.1,00,000/- to Rs.2,50,000/-. The rest of the directions in the impugned award are maintained.

14. The Respondents will have to jointly and severally pay/deposit the enhanced amount of compensation together with interest in this Court within two months from today no doubt by adjusting the

compensation already paid. Upon deposit, the Appellants will have the liberty to withdraw the same.

(M. S. SONAK, J.)

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