(2009) 08 P&H CK 0258

High Court Of Punjab And Haryana At Chandigarh

Case No: F.A.O. No. 2069 of 2001 (O and M)

Mohan Lal and Another	APPELLANT
Vs	
Satish Kumar and Others	RESPONDENT

Date of Decision: Aug. 4, 2009

Citation: (2010) 1 RCR(Civil) 940

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Ashish Gupta, for the Appellant; P.R. Yadav, for the Respondent Nos. 1 and 2 Mr. R.C. Kapoor, for the Respondent No. 3, for the Respondent

Final Decision: Allowed

Judgement

A.N. Jindal, J.

A sum of Rs.60,000/- was awarded by the Motor Accident Claims Tribunal, Narnaul, vide its judgment dated 29.09.2000, on account of the death of Rikku @ Mamta aged about 8 years, in a motor vehicle accident.

2. The respondents have neither challenged the negligence nor their liability. However, the claimants being the parents have sought enhancement of compensation.

3. Heard.

4. Having scrutinized the impugned award, it may be observed that Rikku @ Mamta was 8 years old. In case of the child, it is very difficult to find out the parameters vide which the compensation is to be assessed. The fact that there may have been no pecuniary benefit derived by the parents during the child''s life time but that does not debar them to raise compensation on account of the prospective loss suffered by them. Social strata from which the child is coming, school in which he was studying and hopes and expectations of the parents could be other factors contributing to determine the compensation. In case of child up to the age of 15 years, it is difficult to apply the multiplier. The second schedule appended to the Act

also does not prescribe any multiplier which may be awarded to the child lip to the age of 15 years. Similarly, in Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009(3) RCR (Civil) 76, did not fix any multiplier for the children who expire below the age of 15 years. The Apex Court in case Lata Wadhwa and Others Vs. State of Bihar and Others, while observing that in case of the death of infant, the claim is not barred, laid down some parameters for determining the compensation. The relevant extract of the judgment is reproduced as under:-

11. So far as the award of compensation in case of children are concerned, Shri Justice Chandrachud, has divided them into two groups, first group between the age of 5 to 10 years and the second group between the age group of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform amount of Rs.50,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs.25,000/- has been added and as such to the heirs of the 14 children, a consolidated sum of Rs.75,000/- each has been awarded. So far as the children in the age group of 10 years to 15 years, there are 10 such children, who died on the fateful day and having found their contribution to the family at Rs. 12,000/- per annum, 11 multiplier has been applied, particularly, depending upon the age of the father and then the conventional compensation of Rs.25,000/- has been added to each case and consequently, the heirs of each of the deceased above 10 years of age, have been granted compensation to the tune of Rs. 1,57,000/- each. In case of the death of the infant, there may have been no actual pecuniary benefit derived by its parents during the child''s life time. But this will not necessarily bar the parents claim and prospective loss will found 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 family case of Taff Vale Rail Col. 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 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 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.

At the same time, it must be held that a mere speculative possibility of benefit is not sufficient. Question whether there exists a reasonably expectation of pecuniary advantage is always a mixed question of act and law. There are several decided cases on this point, providing the guidelines for determination of compensation in such cases but we do not think it necessary for us to advert, as the claimants had not adduced any materials on the reasonable expectation of pecuniary benefits,

which the parents expected. In case of a bright and healthy boy, his performances in the school, it would be easier for the authority to arrive at the compensation amount which may be different from sickly, unhealthy, rickety child and bad student, but as has been stated earlier, not an iota of material was produced before Shri Justice Chandrachud to enable him to arrive at just compensation in such cases and, therefore, he has determined the same on an approximation. Mr.Nariman appearing for the TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his views also, the determination made is grossly inadequate. Loss of a child to the parents is ir-recoupable and no amount of money could compensate the parents. Having regard to the environment from which these children were brought, their parents being reasonably well placed officials of the Tata Iron and Steel Company, and on considering the submission of Mr.Nariman, we would direct 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 the conventional figure of Rs.50,000/- should be added and thus the total amount in each case would be Rs.2.00 lakhs. So far as the children between the age group of 10 to 15 years, they are all students of Class VI to Class X and are children of employees of TISCO. The TISCO itself has a tradition that every employee can get one of his child employed in the company. Having regard to these facts, in their case, the contribution of Rs. 12,000/- per annum appears to us to be on the lower side and in our considered opinion, the contribution should be Rs.24,000/- and instead of 11 multiplier, the appropriate multiplier would be 15. Therefore, the compensation, so calculated on the aforesaid basis should be worked out to Rs.3.60 lakhs, to which an additional sum of Rs.50,000/- has to be added, thus, making the total amount payable at Rs.4.10 lakhs for each of the claimants of the aforesaid deceased children.

5. Keeping in view the parameters laid down by the Apex Court in Lata Wadhwu''s case (supra), while adding Rs. 15,000/- as conventional figure, enhancement is made to Rs.75,000/-.

6. Resultantly, the claimants would be entitled to receive Rs. 15,000/- over and above the award amount along with interest at the same rate as awarded by the Tribunal.

Accordingly, the appeal is partly allowed.