

Mohan Lal and Another Vs Satish Kumar and Others

Court: High Court Of Punjab And Haryana At Chandigarh

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 up 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 Wadhwa'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.