(1988) 2 KLJ 187

High Court Of Kerala

Case No: M.F.A. No. 98 of 1983

Dr. M.K. James and another		APPELLANT
	Vs	
George Joseph and Others		RESPONDENT

Date of Decision: July 26, 1988

Citation: (1988) 2 KLJ 187

Hon'ble Judges: K.S. Paripoornan, J; K.G. Balakrishnan, J

Bench: Division Bench

Advocate: Mathews P. Mathew, for the Appellant; K. Jagadeeschandran Nair, T.K.M. Unnithan and Mathews Jacob, for the Respondent

Final Decision: Allowed

Judgement

Paripoornan J.

1. The claimants in O.P. 886 of 1980, Motor Accidents Claims Tribunal, Ernakulam (in short, the Tribunal) are the appellants. The respondents before the Tribunal are the respondents in this appeal also. The said O.P. was tried along with O.P. No. 885 of 1980 and a common award dated 31-3-1982 was passed by the Tribunal. The 1st petitioner in O.P. No. 886 of 1980 is the sole petitioner in O.P. No. 885 of 1980. The 2nd petitioner in O.P. 886 of 1980 is the wife of the 1st petitioner. The petitioners were travelling in their car K.RF 1389 with two children and a servant in Kottayam-Ernakulam route on 7-1-1979. At a place on the northern side of the Appanchira bridge, within the jurisdiction of the Kaduthuruthy Police Station, lorry bearing registration No. KLO 4239, driven by the 1st respondent hit against the front right half of the car. The force of impact was great, The lorry was a petrol tanker. The 3rd respondent is the owner of the petrol tanker and the 2nd respondent is the insurer. In the accident the 1st petitioner suffered severe injuries. He was treated in the Medical College Hospital for 7 days and later in the Lissy Hospital, Ernakulam. He sustained partial disability. In the accident the son of the Petitioners - Jose - aged 13, died. He was a brilliant student studying in the Chinmaya Mission High School:

The first petitioner, Dr. James, belongs to a family having high longevity. His father, aged 72, is still alive. His mother, aged 65, is still alive. For the severe pain, loss of earnings and injury sustained, Dr. James claimed a sum of Rs. 52,000/- as compensation in M. V. O.P. 885 of 1980. In this M.V.O.P. 886 of 1980, Dr. James and his wife claimed Rs. 1,48,000/- as compensation for the death of their son Jose. Defendants; 1 and 3 disputed the claim. It was stated that there was no rashness or negligence on the part of the 1st respondent (driver of the lorry) and the accident happened due to the negligence of Dr. James himself. The amount claimed was stated to be excessive. The insurance company also adopted the same contentions The Tribunal awarded a sum of Rs. 25,000/- with interest as compensation in O.P. No. 885 of 1980. We are not concerned with that O.P. in this appeal. In the O.P. 886 of 1980, wherein James and his wife claimed a sum of Rs. 1,48,000/- as compensation for the death of their son, Jose, the Tribunal awarded a sum of Rs. 27,000/-. Aggrieved by the aforesaid award of compensation, the claimants have come up in appeal. We heard counsel for the appellant, Mr. Mathews P. Mathew and also counsel for the respondents. In this case the Tribunal noticed that Jose was a brilliant boy, aged 13 years, that the parents belonged to a respectable well-to-do family, there is good family background for the boy, Ext. A9 certificate issued from the Chinmaya Mission High School shows that the boy had a very good character, that he could have risen to some position in life and he could have contributed to the happiness of the petitioners during their old age and considering the high rate of inflation, the family background and the scholastic achievements of the boy, awarded a lump sum compensation of Rs. 25,000/- for loss of happiness and support and a sum of Rs. 2,000/-for funeral expenses. Counsel for the appellants argued that an arbitrary sum has been awarded without reckoning factual details. It was argued that deceased Jose was a brilliant boy. He belonged to a well-to-do family. His father, grandfather, father''s brother and others occupied very covetable positions in life and the boy was very brilliant and possessed an excellent character and he could have risen to good positions in life and could have contributed to the happiness and welfare of the petitioners during their old age. It was submitted that the parents could afford good education to the boy and he had a good future. The value of prospective services and loss of pecuniary benefit in the context of high rate of inflation and family background were not at all adverted to. In fact no principle was applied or borne in mind in awarding arbitrarily a compensation of Rs. 27,000/- as against Rs. 1,48,000/- claimed. Counsel for the respondent submitted that in the case of a boy aged 13 years, award of compensation is beset with a series of imponderables and it is not possible to predicate the exact future of the boy, the scholastic and other achievements he may acquire in future or the benefit he could have bestowed on his parents during their old age and so it is only possible to award a lump sum on an ad hoc basis. It was submitted that there is no principle for computing damages in favour of parents in the case of fatal accident to their children.

2. Having heard the rival contentions of the parties, we are of the view that the Tribunal has not applied its mind in awarding a sum of Rs. 27,000/- on an ad hoc basis as against the claim of Rs. 1,48,000/-. It is true that compensation was claimed for the death of Jose,

a boy aged 13 years, at the time of his death. But the fact remains that his father was only 45 years and his mother still less old and his grand-father and grand-mother were alive on the date of the accident, who were 72 and 65 respectively. The grand-father was a Major in the Indian Army and later served as Assistant Personal Officer in the Indian Railways. The father of the boy is a medical practitioner, and his brother was a Special I.G. of Police. There is good family background to the deceased boy. As is seen from Ext. A9, the boy was of a very good character. There can be no uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematic or scientific calculations. The amount recoverable depends upon the particular facts and circumstances of each case. It should be emphasized that the life expectancy of the deceased or of the beneficiaries, whichever is shorter, is a very important factor in arriving at the measure of damages. The various aspects, which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case. In the very nature of things-, there can be no exact or uniform rule for measuring the value of human life. It is true that to some extent arbitrariness or conjecture is unavoidable. Even so, the Tribunal, which is a fact finding authority, should fix the compensation on some principle. It has not been done in the instant case. A reading of paragraph 10 of the order of the Tribunal dated 31-3-1982 will show that a sum of Rs. 27,000/- is fixed at the ipse dixit of the Tribunal and no principle or formula or guideline has been adverted to in fixing the compensation.

3. It is true that the principles for computing damages in favour of parents for the death of their child is beset with very many difficulties. The matter has been considered in detail by Jagannadha Rao J. of the Andhra Pradesh High Court in Andhra Pradesh State Road Trans. Corporation Vs. G. Ramanaiah . Paragraphs 2, 6, 17 to 20 and 28 to 30 in the said judgment deal with the principles to be borne in mind in the matter of estimation of damages consequent on the death of young children in the age group over 10 years and below 18 years. The relevant passages in the aforesaid judgment of the Andhra Pradesh High Court are extracted herein below:

2. Parents'' claims can be divided into five broad categories, as arising out of the death of (a) married children; (b) unmarried adult children above 18 years; (c) grown-up children over 10 years and below 18 years; (d) children between 5 to 10 years; and (e) children below 5 years. I shall consider the English as well as Indian cases and the relevant mathematical principles.

xx xx xx xx

6. The question of estimation of damages consequent on the death of young children is difficult and it will be necessary and useful to take note of certain general principles laid down both in English cases as well as Indian. There is quite a good amount of difference in the method of estimation of damages upon the death of married children; unmarried adult children; adolescent children infant children as detailed in Mc. Gregor on Damages, 12th Edn., paras 1233 to 1236 and Kemp & Kemp: Quantum of Damages, 1982 in

chapter 30 (Claims for Death of Adult Child) and in Chapter 31 (Claims for Death of Infant Child) and Munkman on Damages, pages 50, 66, 67, 128, 129 and these aspects are considered below.

xx xx xx

17. It will be clear that, in principle, the multipliers applied by the Indian courts are higher than the law justifies. Instead of basing the multiplier on the age of the parents as the law requires, they are basing the same on the age of adult child without noticing that the dependency will stop as soon as the parents reach the end of their life expectancy and that it will not last till the end of the life, expectancy of the deceased child. The correct method is to select a multiplier appropriate to the age of the parents.

(c) " Grown-up children over 10 years and below 18 years.

18. Under this class fall children roughly above 10 years and below 18 years. This class consists of children who are likely or close to reach the year when the parents can expect to reap the result of their labour and expense in bringing up the children, though at the moment they are, of course, not receiving any benefit. In Taff Vale RIy. v. Jenkins, (1913) AC 1, the daughter was aged 16 years and was living with her parents. Her apprenticeship as a dress-maker had two more months to run, after which she would have started earning. The defence that she would never have earned or never contributed was rejected. Lord Shaw of Dunferline said:

A son or daughter may be educated..... in a trade or a profession in which the training or apprenticeship is not one which yields any profit at all, but in which the reward afterwards is much greater, probably in consequence of the exclusion of competition by reason of the period of unpaid probation. In such a case the parents stand the charge during the whole apprenticeship or training of the child, and just as that education is about to close, the life is cut off.....I have asked counsel in vain in the course of the case to distinguish an expectation in such a situation in principle from the ordinary expectation in the case of wages being earned at the time, but I have not been able to obtain an answer, and in principle, my Lords, there is no answer.

It was also observed by Lord Moulton that:

The fact of past contribution may be important in strengthening the probability of future pecuniary advantage, but it cannot be a condition precedent to the existence of such a probability.

These passages have been approved by the Supreme Court as will be seen lower down. The remarks in the above case will today equally apply to much older children, particularly those pursuing collegiate education. Again in Buckland v. Guildford Gas Light and Loke Co., 1948(2) All E.R. 1086, the girl was aged 13 years and she was not only assisting the parents" at home and looking after another child aged 8 years but "it was

anticipated that her gifts would later have enabled her to contribute financially as well as by services to the household". An award of ï¿½ 500 was made under the Fatal Accidents Act by Morris, J. and reduced to ï¿½ 200 because ï¿½ 300 was awarded as loss to the estate. In Wathen v. Vermon, (1970) RTR 471 (CA), the deceased was aged 17 years employed and living "with his parents and paying them the cost of his keep out of his wages. The Court of Appeal held itself bound to award damages for loss of potential support even though no support was being rendered at the date of death and the possibility of support being required in the future was remote. A special feature of the case was that in the past, the deceased"s father had Been off-work through ill-health, and though no support would have been required from the son if his father"s health had remained good, the court had to take into account the possibility of his death or disablement during the 5 year period during which it was estimated that the son, before marriage, could have afforded to give support. The deceased was an apprentice earning ï¿½ 6.5 a week and likely to earn ï¿½ 12 per week by his 20th year and ï¿½ 26 per week by his 25th year. He also gave ï¿½ 2 per week to his mother. The father was aged 56 years at the time of the appeal and had suffered a stroke. Accordingly ï¿½ 500 was awarded to the mother. In Duckworth v. Johnson, (1859) 4 H N 653, the deceased was a boy aged 14 years who was earning ï¿½ 4 a week for a year or two but was unemployed at his death and the father, a working mason, was awarded ï¿½ 20. Again in Ellis v. Ocean Steamship Co. Ltd., 1958(1) Lloyd"s Rep 471, the deceased was a seaman aged 17 years and the claim was made by the mother, she having been separated from" the father. The deceased had, at one time, given his mother ï¿½ 5 a month, but Jones, J. held that at the time of his death, the utmost that his mother could have expected was ï¿½ 3 a month, and on the basis that he would not have been able to pay after marriage, the award was limited for 3 years only at ï¿½ 3 a month

s. No.	Age of child	Age of parents	" Multiplier or (deemed multiplier)	Annual dependency*	Present value of pecuniary loss	Citation
	(Yrs;)	(Yrs.)				
1.	16 (Girl)			Rs. 10,000/-(under all heads)		1982 ACJ 229 (Gau)
2.	16	--	12.5Rs. 3,600/-	Rs. 45,000/-		1983 ACJ 666 (BOM)

3.	12	Over 50	12	Rs. 600/-	Rs. 10,000/-	1978 ACJ 334 (Guj)
4.	10	--	15	Rs. 540/-	Rs. 8,100/-	1979 ACJ 186 (Guj)
5.	13	50	15	Rs. 3,600/-	Rs. 54,000/-	1982 ACJ 426 (Guj)
6.	16	50	16	Rs. 2,000/-	Rs. 32,000/-	1982 ACJ (Supp) 180 (Guj)
7.	18	36	15	Rs. 1,200/-	Rs. 18,000/-	1985 ACJ 682 (Guj)
8.	12	--	--	--	Rs. 5,000/-	1977 ACJ 474 (Ker)
9.	17	50	--	--	Rs. 22,000/-	1981 ACJ 439 (Del)
10.	15	Over 30	3.5	Rs. 3,600/-	Rs. 12,000/-	1984 ACJ 525 (MP)
11.	14	--	--	--	Rs. 10,000/-	1973 ACJ 454 (Mad)
12.	12	--	--	--	Rs. 15,000/-	1983 ACJ 625 (Mad
13.	15	--	--	--	Rs. 10,000/-	1984 ACJ 492 (Mad)
14.	10	50	--	--	Rs. 11,200/-	1977 ACJ 459 (Orr)
15.	17.5	47	16	Rs. 1,500/-	Rs. 25,000/-	1983 ACJ 124 (Orr)
16.	17	51	10	Rs. 432/-	Rs. 4320/-	1969 ACJ 173 (P & H)
17.	13	--	_	--	Rs. 19,500/-	1970 ACJ 1 (MP)

*Note: The annual dependency and the damages are based also upon the probable earning capacity and vary from family to family and cannot be straightaway adopted merely on the basis of age.

20. It will again be seen from the two Tables of Indian cases that the multipliers applied are generally high. The courts did not choose to apply a multiplier suitable for the age of the parents. As per the Table given in Bhagwandas Vs. Mohd. Arif, , the multiplier for persons aged 40 or 50 years will respectively be 12.70 and 7.68 and it is necessary to apply these multipliers referable to the age of parents rather than those referable to the age of the deceased child. For a parent aged 30 years, the multiplier will be 16 51.

XX XX XX

28. From the aforesaid discussion, the following principles can be stated:

(a) In the case of death of children, the parents can claim the present value of the future contributions which the deceased would have made to them. The dependency can be estimated by computing the annual contribution which the child would have made from the date of his probable earning. The question as to when a child would have reached such an earning capacity and as to what he could have contributed would depend on the facts of each case the relevant factors being the child"s general level of intelligence or health, the family background, the father"s or family profession, if any, the capacity of the parents to educate the child etc.

(b) After arriving at the annual contribution (or annual dependency) to the family, the multiplier that has to be applied is not the one appropriate to the age of the child at its death but to the age of the parents. This is because of the fact that the dependency to the parents will last only for the lifetime of the parents, who arc likely to predecease the child (if the latter had not died in the accident). Of course, if the child is a grown-up person and married, the multiplier to be applied for arriving at the present value of the future loss to the wife, is the one appropriate to the age of the deceased because the wife, being younger, is normally likely to live upto or beyond the life of her husband.

(c) If the child is unmarried at the time of accident but likely to be married in course of time, the court cannot proceed on the basis that the contribution to the parents will be altogether stopped after such marriage. It may only be partially reduced. This is because of the statutory obligation in our country upon children to maintain their aged parents. In such cases, it is permissible to assess the contribution upto the possible date of marriage and later, separately,

(d) In the case of children above 5 years and below 10 years, it will not be possible to ascertain a suitable multiplier because of the fairly higher mortality rates in that period. But it is permissible to arrive at conventional amounts which may range upto Rs. 15,000/-for accidents in the late seventies.

(e) In the case of children below 5 years (there are no decided cases of award of damages to the parents) a nominal amount upto Rs.5000/- may perhaps be granted.

29. This is in addition to the grant of other conventional amounts towards pain and suffering and loss of amenities for the short period between the time of accident and the time of death and for long expectation of life and this will be the award towards the loss to the estate.

30. Before leaving his part of the discussion. I have to emphasise a certain difference between claims by parents in cases of death of children and cases of claims by injured children. It will be noticed that in cases of death of children, because the parents are older

and the dependency will not last till the total expected period of life of the child, the multiplier is to be selected on the basis of the age of the parents. But, in the case of injured children, the claim being not by the parents but by the child himself, there is no question of selecting the multiplier appropriate to the parents'' age. The multiplier appropriate to the age of the injured child at the date of trial will have to be selected.

4. We fully concur with the aforesaid decision as laying down the correct principles to be applied in such cases. Jose, son of the claimants in the instant case was aged 13 at the time of death. So the principle stated herein above will apply for award of compensation in this case.

5. Since we are of the view that the fact finding Tribunal has not ascertained the relevant facts, which are germane to the enquiry, nor has determined the compensation on proper data or material bearing in mind the guidelines discernible from the decisions, we are constrained to set aside the award passed by the Tribunal in O.P. 886 of 1980 and order a remit to the said Tribunal to decide the matter afresh in accordance with law and in the light of the principles laid down herein above.

The appeal is allowed, The matter is remanded to the Motor Accidents Claims Tribunal, Ernakulam, for a proper disposal in accordance with law.