(1992) 03 MP CK 0015

Madhya Pradesh High Court (Gwalior Bench)

Case No: M.A. No. 40 of 1988

Nand Kishore Verma and Another		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: March 23, 1992

Citation: (1993) ACJ 1287

Hon'ble Judges: T.N. Singh, J; R.C. Lahoti, J

Bench: Division Bench

Judgement

T.N. Singh and R.C. Lahoti, JJ.

Enhancement in this appeal is claimed of compensation awarded for the death of a child, aged 9 years, in a motor accident. The claimants are his father and minor sister. Admittedly, the mother of the child was also a claimant who died during the trial of the claim. She died, it is submitted, being overtaken by excessive grief, unable to withstand the emotional stress due to death of her only son.

2. The Tribunal has made an award of Rs. 29,000/- in all and in this appeal the claimants have laid a tall claim for Rs. 7,52,000/-. We do not think that is justified but to some enhancement certainly the appellants are entitled and the claim to that extent is allowed for reasons to follow hereinafter.

3. We are of the view that in dealing with this appeal wherein enhancement is claimed of the compensation awarded, it is not necessary to reconsider the question of rash and negligent driving of the vehicle in question. That finding of the Tribunal is binding on us and indeed no appeal is preferred against that.

4. Mr. Mittal had tried to agitate that point but we told him that we would not undertake the misadventure to move into the prohibited field. In any case, we may still express the opinion that very rightly the Tribunal has held that the child died due to negligence of the driver. Indeed, it is not disputed by Mr. Mittal that while the vehicle was being reversed the accident happened. Evidently, the care which the

driver was to take in reversing the vehicle has been found wanting by the Tribunal and we endorse that finding.

5. Mr. N.P. Mittal also submitted that there is no positive finding in favour of the appellants to uphold that claim for undue enhancement because the Claims Tribunal has held that no material had come before it to establish that the child was a brilliant child.

6. Mr. R.D. Jain appearing for the claimants-appellants, on the other hand, has drawn our attention to the evidence of the teacher and submitted that his evidence has been arbitrarily rejected. It is true that the teacher deposed that the child was an intelligent child but it is equally true he did not produce school records such as progress report of the child.

7. In any case, there are other facts and circumstances which have weighed with us in modifying the award. It has come on record that the boy''s mother was an advocate of this court and his father also holds a responsible post in the All India Radio. Both parents were sufficiently educated and were highly interested and duly equipped in bringing up the child in a manner befitting their own status and station in life. He would have definitely got good education from highly educated parents who were motivated to take care of their only son to fulfil their aspirations, matching their circumstances. Indeed, it has also come on record that the father had undergone vasectomy operation and, therefore, he could not expect any other child much less a son on whom the parents could depend in their old age.

8. We have also considered the longevity of the parents and grandparents and from genetic point of view it is possible to project favourably the entitlement of dependency of the parents. It is stated that the grandparents lived up to the age of 80 years. That fact also weighed us in holding that the impugned award is not commensurate With the loss which the parents suffered in losing their child at the tender age of 9 years. True, we cannot give any monetary solace to his father or his young sister for the loss of child''s mother though she may have died due to shock. Yet, the other facts are there and these we have noted in reaching the conclusion that dehors the emotional factor the two surviving claimants are entitled to enhanced compensation.

9. Reliance is placed by Mr. R.D. Jain on the decision of the Gauhati High Court in the case of Uman Singh Gurung and Another Vs. Seva Ram Dutta and Others, to submit that for the death of a child, aged 8 years, the court had awarded Rs. 60,000/-. However, it is to be noted that the sum included Rs. 10,000/- for shock, pain, agony and anguish and in our view on those heads compensation is not awardable. Therefore, we would read the award of Gauhati High Court as Rs. 50,000/- because we cannot ignore the law.

10. The other decision is of Rajasthan High Court in the case of Hassa Mal v. Jatti Ram 1986 ACJ 1121 . In that case for death of a child of 9 years the High Court

enhanced the award from Rs. 10,000/- to Rs. 48,000/-. However, in that case the circumstances of the parents of the child are not noted and in the Gauhati High Court''s case also not much in that regard is to be read. The only observation we find in that case is that in the matter of compensation for the death of a child the claimant parents'' expectations from the child would have to be taken into consideration for determination of just compensation payable.

11. Having given our anxious consideration to the facts proved in this case and the law cited, we are of the view that the reasonable compensation awardable to the claimants-appellants for the death of the child Vivek Verma should be Rs. 50,000/-. Accordingly, the compensation is enhanced to that extent and the award stands modified. The appeal is accordingly disposed of. No costs.