SUPREME COURT OF INDIA

Bhakra Beas Management Board

Vs.

Kanta Aggarwal

C.A.No.4216 of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

07.07.2008

JUDGMENT

Dr. Arijit Pasayat, J

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court dismissing the appeal filed against the award dated 4.2.2003 passed by Motor Accidents Claim Tribunal, Chandigarh (in short `Tribunal').

3. Background facts in a nutshell are as follows:

> "In an accident which took place on 16.11.1994 at about 10.00 p.m. K.C. Aggarwal (hereinafter referred to as the `deceased') who was sitting directly behind the driver lost his life. Balbir Singh (PW-1) was an eye witness to the accident. At the relevant time, he was standing in front of Mayur Dhabanear which the accident took place. He categorically deposed that the jeep was coming from Bilaspur side and was going towards Sunder Nagar at a very high speed. It was being driven by the driver in the middle of the road. He also stated that a truck was coming from the opposite side at normal speed. When the truck reached near the jeep, the driver of the jeep applied brakes, but because the jeep was being driven at a very high speed, it came to halt in the middle of the road.
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> The back portion of the truck struck against the right side portion of the jeep. Some persons rushed towards the jeep. In the meantime, the truck sped away from the spot. He categorically stated that the accident occurred due to rash and negligent driving of the jeep driver. The deceased left behind a widow and three children.
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> A claim petition was filed by the widow and the children under Section 166 of the *Motor Vehicles Act, 1988* (in short the `Act'). The Tribunal awarded compensation of Rs.8, 48,160/- along with interest @ 9% per annum from the date of institution.

> An appeal was filed before the High Court. It was pointed out that on the death of K.C. Aggarwal, respondent No.1- widow had been provided with compassionate appointment and she was getting salary of nearly Rs.4,700/- p.m. (basic pay of nearly Rs.4,700/-) and a residence was provided to her. The High Court did not accept this plea and observed that the quantum of compensation has been rightly fixed."

4. Learned counsel for the appellant submitted that the benefits which claimant has received on account of death of her husband have to be deducted while computing the compensation, if any, payable. With reference to the factual aspects it is submitted that respondent No.1 was getting salary of nearly Rs.4,700/- and therefore she was not entitled to compassionate appointment. It is pointed out that the appeal filed by the claimants is pending adjudication and without considering the relevant factors the High Court has declined to interfere.

5. Learned counsel for the respondents on the other hand submitted that the judgment of the High Court is in order.

6. There are several undisputed factors: (i) the husband of respondent No.1 had received fatal injuries in an accident; (ii) the claimants seem to be facing financial problem; (iii) the concept of just compensation cannot be lost sight of. The High Court does not appear to have considered the effect of amount received on account of compassionate appointment.

7. In *United India Insurance Co. Ltd. and Ors. v. Patricia Jean Mahajan and Ors.*[1] it was inter-alia observed as follows:

> "24. Mr. Soli J. Sorabji submitted that while assessing the amount of compensation, the benefits which have accrued to the claimants by reason of death must also be taken into account. A kind of balancing of losses and the gains or benefit by reason of death would be necessary. In support of the above contention he has referred to a decision reported in *Gobald Motors Service Limited v. R. M. K. Veluswami*[2], and others. It is a decision by a three-Judge Bench of this Court, and at SCR page 938 the observations made by the House of Lords in *Davies v. Powell Duffryn Associated Collieries Ltd.*[3] has been quoted which reads as follows : AIR ER p. 658 B)
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> "The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependent by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately."
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> 25. To further elaborate the above proposition, observations made by Lord Wright in Davies case (supra) have also been quoted. It reads as follows:-
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> "The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which

may be legitimately placed in diminution of the damages must be considered.....The actual pecuniary, loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and on the other, any pecuniary advantage which from whatever source comes to him by reason of the death."

The learned counsel laid stress on the last part of observation made to the effect that - for the purposes of balancing losses and gains any pecuniary advantage which from whatever source come to them, has to be considered.

26. It is submitted in Gobald's case the principle of Davies Case was referred and taken into consideration. Reliance has also been placed on a decision reported in *M/s. Sheikhupura Transport Co. Ltd. v. Northern India Transport Insurance Company*[4], particularly to the observations made by the Court in paragraph 6 of the judgment where the principle in the case of Gobald Motors (supra) has been reiterated. In this connection learned counsel for the Insurance Company has also drawn our attention to the decision in the case of Susamma Thomas (supra) particularly on paragraph 8 of the report, where it is observed that the principle in the case of Davies v. Powell was adopted, in the case of Gobald Motors (supra). It is thus submitted that principle of balancing of loss and gains, so as to arrive at a just and fair amount of compensation has been accepted by this Court as well. On behalf of the *Insurance Company Hodgson v. Trapp*[5] has been relied on in which our attention has particularly been drawn to the following observations made at All ER p. 873j-874b:

".....the basic rule is that it is the net consequential loss and expense which the Court must measure. If, in consequence of the injuries sustained, the plaintiff has enjoyed receipts to which he would not otherwise have been entitled, prima facie; those receipts are to be set against the aggregate of the plaintiff's losses and expenses in arriving at the measure of his damages. All this is elementary and has been said over and over again. To this basic rule there are, of course, certain well established, though not always precisely defined and delineated, exceptions. But the Courts are, I think, sometimes in danger, in seeking to explore the rationale of the exceptions, of forgetting that they are exceptions. It is the rule which is fundamental and axiomatic and exceptions to it which are only to be admitted on grounds which clearly justify their treatment as such."

From the above passage it is clear that the deductions are admissible from the amount of compensation in case the claimant receives the benefit as a consequence of injuries sustained, which otherwise he would not have been entitled to. It does not cover cases where the payment received is not dependent upon an injury sustained on meeting with an accident. The other observation to which our attention has been drawn at page 876 placitum 'f' also does not help the contention raised on behalf of the Insurance Company for deduction of amounts in the present case. The Court was considering a situation where due to the injuries received the victim was claiming cost of care necessary in future in respect of which statutory provision, provided for attendant's

allowance. It was found that the statutory benefit and the damages claimed were designed to meet the identical expenses. This is however not so, at least not shown, to be so in the case in hand."

8. Similarly, in *Gobald Motor Service Ltd. and Anr. Vs. R.M.K. Veluswami and Ors.*[6] at p.938) it was inter-alia observed as follows:

"The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Acts is well settled, namely, that any benefit accruing to a dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately."

9. In *Helen C. Rebello v. Maharashtra S.R.T.C.*[7] it was held as follows:

"32. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on one hand, the loss to the claimant of the future pecuniary benefits that would have accrued to him but for the death with the "pecuniary advantage" which from whatever source comes to him by reason of the death. In other words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to change its colour to the extent a statute intends to do. Thus, this has to be interpreted in the light of the provisions of the *Motor Vehicles Act, 1939*. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, not on account of any other death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, correlating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of the pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train, air flight not involving a motor vehicle, it would not be covered under the Motor Vehicles Act. Thus, the application of the general principle under the common law of loss and gain for the computation of compensation under this Act must correlate to this type of injury or death, viz., accidental. If the words "pecuniary advantage" from whatever source are to be interpreted to mean any form of death under this Act, it would dilute all possible benefits conferred on the claimant and would be contrary to the spirit of the law. If the "pecuniary advantage" resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets moveable, immovable, shares, bank accounts, cash and every amount receivable under any contract. In other words, all heritable assets including what is willed by the deceased etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By such an interpretation, the tortfeasor in spite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be

interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act, whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other forms of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

"... For the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, ...".

33. Thus, it would not include that which the claimant receives on account of other forms of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no corelation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that which would have come to the claimant even otherwise, could not be construed to be the "pecuniary advantage", liable for deduction. However, where the employer insures his employee, as against injury or death arising out of an accident, any amount received out of such insurance on the happening of such incident may be an amount liable for deduction. However, our legislature has taken note of such contingency through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of and in the course of employee.

34. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., the same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. either for himself or for his family which such person knows under the law has to go to his heirs after his death either by succession or under a Will could be said to be the "pecuniary gain" only on account of one's accidental death. This, of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no corelation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any corelation with an amount earned by an individual. Principle of loss and gain has to be on the same plane within the same sphere, of course, subject to the contract to the contrary or any provision of law."

10. It is pointed out that the award as made is extremely high and the concept of just compensation has been lost sight of.

11. Learned counsel for the respondent supported the judgment and additionally submitted that appeal of respondent No.1 is pending. In normal course, when two appeals are directed against the common judgment, both the appeals should be heard by the same Bench of the High court.

12. But we find that the High Court lost sight of the fact that the benefits which the claimant receives on account of the death or injury have to be duly considered while fixing the compensation. It is pointed out that respondent No.1 was getting Rs.4,700/- p.m. and a residence has been provided to her and actually the compassionate appointment was given immediately after the accident.

13. In view of what has been stated above, the High Courts judgment is clearly unsustainable. However, the accident took place more than 14 years back and it would not be desirable to send the matter back to the Tribunal for fresh consideration. A sum of rupees five lakhs has been deposited vide this Court's order dated 1.11.2004. We are of the considered view that in view of the background facts, it is just and proper that the sum of Rupees five lakhs already deposited shall be permitted to be withdrawn by the claimants in full and final settlement of the claim relatable to the death of the deceased. It is for the Tribunal to fix the quantum of fixed deposit and the amount to be released to the claimants.

14. The appeal is allowed in the aforesaid extent.

[1]*(2002 (6) SCC 281)*
[2]*(1962 (1) SCR 929)*
[3]*(1942 AC page 601)*
[4]*(1971 (1) SCC page 785)*
[5]*(1988 (3) All ER 870)*
[6]*(1962 (1) SCR 929*
[7]*(1999 (1) SCC 90)*