SUPREME COURT OF INDIA

Priya Vasant Kalgutkar

Vs.

Murad Shaikh

C.A.No.4795 of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

29.07.2009

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Appellant is a young girl. She met with an accident on or about 20.9.1999 while she was aged only 9 years. In the said accident she suffered the following injuries, as stated in the application filed on her behalf before the Motor Accidents Claims Tribunal:

> "1. There is swelling deformity fracture of middle 3rd of Lt. thigh (femur shaft).
>
> 2. Abrasion over left frontal region.
>
> 3. Abrasion over Rt. Lateral aspect."

3. She was treated by two doctors. According to one of them, namely, Dr. Mukund, who examined himself as PW3, she suffered 10% to 15% of disability whereas according to the other doctor, Dr. Shivanand, she suffered 20% to 25% of physical disability in her left lower limb. An amount of Rs.3,00,000/- was claimed by her by way of compensation in the claim petition before the Motor Accidents Claims Tribunal under Section 166 of the *Motor Vehicles Act, 1988* (hereinafter called and referred to for the sake of brevity as `the Act'). The Tribunal, however, having regard to the evidences brought on record, opining that permanent disability suffered by her would be 10%, a sum of Rs.40,000/- awarded on the said ground. The total amount of compensation determined was a sum of Rs.72,785/- details of which are as under :

> "Rs.18,000/- towards pain and sufferings and agony, Rs. 12,460 towards diet and attendant charges and Rs.323/- were awarded towards medical expenses."

4. On an appeal preferred thereagainst, the High Court, without assigning any reason, enhanced the amount of compensation to Rs.1,12,000/-, stating :

> "Petitioner could be awarded Rs.30,000/- for pain and agony, Rs.10,000/- for medical and incidental expenses relating to treatment, Rs.15,000/- for loss of amenities and discomfort on account of disability, Rs.27,000/- (1500 X 18) for loss of future earnings on account of disability and Rs.20,000/- for loss of marriage prospects on account of disability. In all, the petitioner is entitled to the compensation of Rs.1,12,000/- as against Rs.72,785/- awarded by the Tribunal. On the enhanced compensation, the interest payable shall be 6% p.a. from the date of petition till payment."

5. Appellant being aggrieved by and dissatisfied therewith is before us.

6. Mr. P.V.V. Shetty, learned senior counsel appearing on behalf of the appellant, would contend that the High Court committed a serious error in awarding only a sum of Rs.1,12,000/- without taking into consideration her prospect of marriage. The amount of compensation on the basis of notional income should not have been determined, urging that even if she was to work as a labourer, she would have earned at Rs.4,000/- per month.

7. Indisputably, she was a child at that time. She had no earning. What amount could be awarded towards future loss of earning or prospective loss of earning could not have been determined on the basis of any legal principle. Compensation for the injuries suffered by a person in a motor vehicle accident can be determined either on the basis of the actual damages suffered or upon application of the structured formula. Although for the purpose of invoking the provisions of Section 163A of the Act, a legal principle may be found in the Second Schedule thereof. The Second Schedule provides that where no income is proved, notional income for the purpose of payment of compensation to those who had no income prior to accident, a sum of Rs.15,000/- per annum would be considered as the multiplicand. The multiplier which was required to be applied would be 15.

> "Paragraph 4 and 5 of the said Schedule reads as under:
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> 4. General damages in case of injuries and disabilities—
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> (i) Pain and sufferings :
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> (a) Grievous injuries Rs.5,000
>
> (b) Non-grievous injuries Rs.1,000 (ii) Medical expenses--actual expenses Incurred supported by bills/vouchers But not exceeding as onetime Payment Rs.15,000
>
> 5. Disability in non-fatal accidents-- The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents :

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks. PLUS either of the following :

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above. Injuries deemed to result in permanent total disablement/permanent partial disablement and percentage of loss or earning capacity shall be as per Schedule I under *Workmen's Compensation Act, 1923*."

8. Thus, under the head of disability in non-fatal accident, the amount of compensation can be determined only on that basis.

9. We may, however, notice that in *Lata Wadhwa v. State of Bihar*[1], this Court held:

"11. So far as the award of compensation in case of children is concerned, Shri Justice Chandrachud has divided them into two groups, the first group between the age group 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 sum 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 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 an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. 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 famous case of Taff Vale Rly. v. Jenkins 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 the 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 the 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 reasonable expectation of pecuniary advantage is always a mixed question of fact 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 another 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 a just compensation in such cases and, therefore, he has determined the same on an approximation. Mr. Nariman, appearing for TISCO on his own, submitted that the compensation determined for the children of all age groups could be doubled, as in his view also, the determination made is grossly inadequate. Loss of a child to the parents is irrecoupable, 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 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. TISCO itself has a tradition that every employee can get one of his children 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.

Even by that standard, the amount of compensation granted by the High Court appears to be adequate in absence of any evidence having brought on record as to the actual damages."

10. The appeal is dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

[1]*(2001) 8 SCC 197*