

SUPREME COURT OF INDIA

National Insurance Co.Ltd.

Vs.

Kusuma & Anr.

C.A.No.7212 of 2011

(D.K.Jain and R.M.Lodha,JJ.,)

23.08.2011

JUDGMENT

D.K.Jain,J.,

SLP(Civil)No.17905 of 2008

1. Leave granted.
2. Challenge in this appeal, by special leave, is to the legality and validity of the judgment and order dated 17th January, 2008, delivered by the High Court of Karnataka at Bangalore, whereby the High Court has allowed the appeal preferred by respondent No.1 herein, enhancing the compensation awarded to her by the Motor Accident Claims Tribunal (for short "the Tribunal") constituted under the Motor Vehicles Act, 1988 (for short "the Act") to `1,80,000/- along with interest @ 6% per annum.
3. To appreciate the controversy, the factual matrix in a nutshell is as under :

“On 28th June 1995, the car in which Mrs. Kusuma, respondent No.1 in this appeal (hereinafter referred to as "the claimant"), aged about 36 years, was travelling from Sullia to Puttur collided with a Bus owned by Karnataka State Road Transport Corporation, respondent No.2 herein. Due to the impact of the accident, the claimant and others sustained injuries. The claimant, who was 30 weeks pregnant, suffered a fatal blow on the stomach. She was admitted in the hospital, where an X-ray and scanning of the foetus showed that the baby had died inside the uterus. On an induced delivery, the following day she delivered a still born baby. The claimant filed a claim petition under Section 166 of the Act before the Tribunal, Mangalore, making a claim of `2,00,000/- with cost and interest at 12%, towards the expenses incurred on medical treatment, mental shock, pain and loss of child.”

4. The Tribunal vide award dated 5th October 2004, inter alia, held that loss of foetus on account of injury sustained by the claimant in the accident was akin to the death of a child of a tender age. Relying on a decision of the Karnataka High Court, wherein the Court had awarded a compensation of `25,000/- towards the loss of affection and `25,000/- towards the loss of estate on the death of a child of less than 1 year of age in an accident, the Tribunal allowed the claim in part and awarded a compensation of an amount of `50,000/- towards the loss of unborn child and a further sum of `10,000/- towards pain and sufferings to the claimant, along with an interest @ 6% per annum from 18th November 1995 i.e. the date of institution of the claim petition till the date of deposit/payment. The Insurance Company, the appellant in this appeal, was directed to pay the said compensation to the claimant, in order to indemnify the owner of the car. Claim petition against the owner of the Bus was rejected.

5. Dissatisfied with the quantum of compensation awarded by the Tribunal, the claimant filed an appeal before the High Court, seeking enhancement of the aforesaid compensation. Pertinently, the Insurance Company did not question the award.

6. Applying the principle indicated by this Court in *New India Assurance Company Ltd. Vs. Satender & Ors.*¹, in relation to assessment of quantum of compensation on the death of a child in an accident, the High Court, by a short judgment allowed the appeal in part and enhanced the compensation to a consolidated amount of `1,80,000/- with interest @ 6% per annum from the date of the petition till the date of payment.

7. Being aggrieved, the Insurance Company is before us in this appeal.

8. At the time of issuing notice to the respondents, at the first blush, it was felt that the appeal involved a very important question of law, namely, whether an unborn child (foetus) while still in mother's womb can be considered to be a child for the purpose of claiming compensation under Section 166 of the Act and, therefore, Mr. Uday U. Lalit, Senior Advocate, was requested to assist the Court as Amicus Curiae. Accordingly, we heard Mr. Gaurav Aggarwal, learned counsel appearing for the appellant and the learned Amicus Curiae on the said issue. However, having closely examined the fact-situation as emerging from the record, we are convinced that the appellant cannot be permitted to raise the aforesaid issue. In the present case, having chosen not to question the correctness of the award made by the Tribunal, determining the amount of compensation "towards the loss of unborn child", the appellant-Insurance Company is now estopped from contending that an unborn child cannot be considered to be a child for the purpose of claiming compensation under Section 166 of the Act. It is manifest from the impugned judgment that the question for consideration before the High Court in claimant's appeal was with regard to the quantum of compensation and not the entitlement of claim for grievous injury to a 30 weeks old child in utero resulting in the birth of a still born child.

9. Thus, under the given circumstances, the question that survives for our consideration is whether the quantum of compensation determined by the High Court, at a lump sum amount of `1,80,000/-, for the loss of still born child, treating it as a child, and towards pain and

sufferings to the respondent-claimant awarded by the Tribunal at `50,000/- and `10,000/- respectively, warrants interference by this Court.

10. On receipt of an application for compensation made under Section 166 of the Act, Section 168 of the Act casts an obligation on the Tribunal to determine the amount of compensation "which appears to it to be just". The expression "which appears to it to be just" gives a wide discretion to the Tribunal to determine the compensation which in the opinion of the Tribunal is "just". Explaining the meaning of the word "just" as appearing in Section 110B of the Motor Vehicles Act, 1939, which was in pari materia with Section 168 of the Act, this Court in *Helen C. Rebello & Ors. Vs. Maharashtra State Road Transport Corporation & Anr.*² observed thus :

"The word "just", as its nomenclature, denotes equitability, fairness and reasonableness having a large peripheral field. The largeness is, of course, not arbitrary; it is restricted by the conscience which is fair, reasonable and equitable, if it exceeds; it is termed as unfair, unreasonable, unequitable, not just. Thus, this field of wider discretion of the Tribunal has to be within the said limitations and the limitations under any provision of this Act or any other provision having the force of law."

11. Thus, the word "just" connotes something which is equitable, fair and reasonable, conforming to rectitude and justice and not arbitrary. It may be true that Section 168 of the Act confers a wide discretion on the Tribunal to determine the amount of compensation but this discretion is also coupled with a duty to see that this exercise is carried out rationally and judiciously by accepted legal standards and not whimsically and arbitrarily, a concept unknown to public law. The amount of compensation awarded is not expected to be a windfall or bonanza for the victim or his dependent, as the case may be, but at the same time it should not be niggardly or a pittance. Thus, determination of "just" amount of compensation is beset with difficulties, more so when the deceased happens to be an infant/child because the future of a child is full of glorious uncertainties. In the case of death of an infant many imponderables, like life expectancy of the deceased, his prospects to earn, save, spend and distribute have to be taken into account. It is quite possible that there may be no actual pecuniary benefit which may be derived by his parents during the life time of the child. But at the same time that cannot be a ground to reject the claim of the parents, albeit they establish that they had reasonable expectation of pecuniary benefit if the child had lived. The question whether there exists a reasonable expectation of pecuniary benefit is always a mixed question of fact and law but a mere speculative possibility of benefit is not sufficient. In *Satender & Ors. (supra)*, relied upon by the High Court, while dealing with a claim for compensation under the Act in relation to the death of a nine year old child in a truck accident, this Court had observed as follows :

"9. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the

more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents."

12. It was further observed that:

"In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation."

13. It is quite true, as observed in *Satender & Ors. (supra)*, that the question of assessment of compensation in a case where the deceased is an infant involves a good deal of guesswork but in our view it cannot be a wild guesswork. As aforesaid, some material has to be adduced by the claimants to prove that they entertained a reasonable expectation of pecuniary advantage from the deceased. There are quite a few precedents providing guidelines for determination of compensation in such cases but because of nature of the order we propose to pass on facts in hand, we deem it unnecessary to burden the judgment by making a reference to all these cases, except to note that in *Lata Wadhwa & Ors. Vs. State of Bihar & Ors.*³ as also in *M.S.Grewal & Anr. Vs. Deep Chand Sood & Ors.*⁴, wherein a large number of young school going children had lost their lives, respectively in fire and by drowning, multiplier method was adopted and applied for assigning value of future dependency to determine the quantum of compensation.

14. Having examined the instant case on the touchstone of the aforestated broad principles, we are of the opinion that neither the Tribunal nor the High Court applied any principle for determination of the amount of compensation on account of the death of a still born child. It is clear from a bare reading of the orders of the Tribunal and the High Court that no reasons have been indicated by the Tribunal while awarding a lump sum amount of `50,000/- towards the loss of unborn child and `10,000/- towards pain and suffering to the mother and by the High Court enhancing the said amounts to a consolidated amount of `1,80,000/-. Besides, in the impugned judgment, we do not find any discussion on the question of non-pecuniary compensation awarded by the Tribunal to the claimant-mother on account of pain and suffering as a result of death of the child. In the normal course, we would have remanded the matter back to the Tribunal for fresh consideration. However, bearing in mind the quantum of compensation awarded by the courts below and the fact that the accident took place in the year 1995, we are of the opinion that at this juncture it would be too harsh to direct the

claimants to undergo the entire gamut of a fresh exercise under Section 168 of the Act. Therefore, in the facts and circumstances of the case, we refrain from interfering with the impugned judgment and dismiss the appeal accordingly, with no order as to costs.

15. Before concluding, we place on record our appreciation for the valuable assistance rendered by Mr. Uday U. Lalit, the learned Amicus Curiae.

Judgment Referred.

¹(2006) 13 SCC 0060

²(1999) 1 SCC 0090

³(2001) 8 SCC 0197

⁴(2001) 8 SCC 0151