

MADHYA PRADESH HIGH COURT

Ramesh Chandra

Vs.

M.P.S.R.T. Corpn., Bhopal

Misc. First Appeal No.142 of 1979
(G.P. Singh, C.J. and Faizanuddin, J.)

26.04.1982

JUDGMENT

G.P. Singh, C.J.

1. This is an appeal under Section 110D of the Motor Vehicles Act, 1939, against an award dated 16th Feb., 1979 by which the Motor Accidents Claims Tribunal, Hoshangabad, has allowed Rs. 9,000 to the appellants as compensation in respect of a motor accident. The appellants seek enhancement of compensation.

2. The accident which led to the claim for compensation made by the appellants took place on 17th Dec., 1976. In this accident, Vijai Kumar who was aged 19 years died. Appellant No.7 Smt. Rewabai is the mother of the deceased. She, at the time of the accident, was aged 50 years. Appellants 1 to 6 are brothers and sister of the deceased. It may be mentioned at the outset that appellants 1 to 6 are neither the dependents mentioned in Section 1A of the Fatal Accidents Act, 1855, nor legal representatives under the Hindu Succession Act, 1956. Appellant No.7 alone who is a dependent under the Fatal Accidents Act and also a legal representative in accordance with Section 8 and class I of the Schedule to the Hindu Succession Act, could have maintained the action for recovery of damages under Sections 1-A and 2 of the Fatal Accidents Act. The respondents have not appealed against the award. The finding that the accident was caused by the negligence of the driver of the motor vehicle must, therefore, be taken to be established. The only question is as to the quantum of compensation.

3. This is a case in which the only dependent left by the deceased is the mother aged 50 years. The mother's dependency taking the average age as 65 years would continue

for 15 years. The deceased was a student in the Industrial Training Institute. He was undergoing the training of fitter. After passing the said training in one or two years he would have started earning Rs. 300 to Rs. 400 per month. This is abundantly clear from the evidence of Pavan Kumar Singh (P.W.3) and Suresh Chandra Sahu (P.W.9). The mother had the immediate prospect of getting about Rs. 100 per month for her maintenance from the deceased, Having regard to the age of the mother, we would apply the multiplier of 10 to the annual loss of dependency of Rs. 1,200. The principles bearing on the assessment of compensation for loss of dependency have been recently stated by this Court in *State v. Devi Rawat* ¹ to which one of us (C.J.) was a party and in which all relevant cases including the decision of the House of Lords in *Cookson v. Knowles*, ² have been taken into account. We do not, therefore, want to burden our judgment with restatement of those principles. The compensation payable on account of loss of dependency to the mother works out to Rs. 12,000.

4. In addition to damages for loss of dependency under Section 1-A of the Fatal Accidents Act, the mother, as earlier mentioned by us, is also entitled as a legal representative of the deceased to claim compensation under Section 2 of that Act for loss to the estate of the deceased; (*Gobald Motor Service v. Veluswami*, ³ *G.K. Subramonia Iyer v. T.K. Nair*. ⁴ and *Shankarrao v. Babulal*.)⁵ Till recently it was generally understood that damages recoverable for loss to the estate are in respect of loss of expectation of life of the deceased and not in respect of loss of earnings of the "lost years" meaning thereby the period during which the deceased would have continued to earn but for his death in the accident. It was, therefore, common to award conventional and moderate damages; (see *Banham v. Gambling*, ⁶ and *Shankarrao v. Babulal at p.573, para 22(of MPLJ) (at p.162 of AIR) (supra)*). Even in cases where damages were claimed for personal injuries the law was that damages in respect of future loss of earnings could be awarded only in respect of the period of life left to the plaintiff and not by reference to his expectation of working life, as it would have been, if he had not suffered the injuries; (*Oliver v. Ashman*, ⁷ The law on this point, however, has in recent years undergone a change. In *Pickett v. British Rail Engineering Ltd.*, ⁸ the House of Lords overruled the case of *Oliver v. Ashman (supra)*. It was held in this case that in an action for damages for personal injuries damages for loss of future earnings should include the whole period of plaintiff's pre-accident expectancy of earning life. In other words, it was held that the plaintiff in such cases is entitled to claim damages for lost earnings of lost years. The House of Lords' decision in *Pickett's* case brings the English law in line with the recommendations of the Law

Commission and the Pearson Commission (See Salmond and Houston. Law of Torts, 18th Edition, pp.533, 534). The High Court of Australia also holds the same view; (*Skelton v. Collins*,⁹ Munkman Damages for Personal Injuries and Death, 6th Edition, p.49). Pickett's case was followed in *Lim Poh Choo v. Camden Health Authority*,¹⁰ On the same lines, more recently, the House of Lords in *Gammell v. Wilson*¹¹ held that instead of conventional and moderate damages for loss of expectation of life, damages for loss to the estate should include damages for loss of earnings of the lost years in case of death. The correct approach in law to the assessment of damages for lost earnings of lost years in case of death is stated in the speech of Lord Scarman as follows:

"The correct approach in law to the assessment of damages in these cases presents, my Lords, no difficulty, though the assessment itself often will. The principle must be that the damages should be fair compensation for the loss suffered by the deceased in his lifetime. The appellants in Gammell's case were disposed to argue, by analogy with damages for loss of expectation of life, that in the absence of cogent evidence of loss, the award should be a modest conventional sum. There is no room for a 'conventional' award in case of alleged loss of earnings of the lost years. The loss is pecuniary. As such, it must be shown, on the facts found, to be at least capable of being estimated. If sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach mathematical certainty, the court must make the best estimate it can. In civil litigation it is the balance of probabilities which matters. In the case of a young child, the lost years of earning capacity will ordinarily be so distant that assessment is mere speculation. No estimate being possible, no award, not even a 'conventional' award should ordinarily be made. Even so, there will be exceptions: a child television star, cut short in her prime at the age of five, might have a claim; it would depend on the evidence. A teenage boy or girl, however, as in Gammell's case may well be able to show either actual employment or real prospects, in either of which situation, there will be an assessable claim. In the case of a young man, already in employment (as was young Mr. Furness), one would expect to find evidence on which a fair estimate can be made. A man, well-established in life, like Mr. Pickett, will have no difficulty. But in all cases it is a matter of evidence and a reasonable estimate based on it.

The problem in these cases, which has troubled the Judges since the decision in

Pickett's case, say been the calculation of the annual loss before applying the multiplier (i.e. the estimated number of lost working years accepted as reasonable In the case). My Lords, the principle has been settled by speeches in this House in Pickett's case. The loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which his job and career prospects at time of death would suggest he was reasonably likely to achieve. Subtle mathematical calculations, based as they roust be on events or contingencies of a life which he will not live, are out of place; the Judge must make the best estimate based on the known facts and his prospects at time ol death."

5. The decision in Gammell's case was unanimous that damages recoverable for loss to the estate in case of death must include damages for loss of earnings of the period during which the deceased would have continued to work but for his death, though some at the speeches were critical of the guess work and speculation involved in assessment of these damages. We, however, find no good reason in not applying the decision in Gammell's case for assessment of damages under Section 2 of 1 the Fatal Accidents Act, Indeed the principle of assessment of damages laid down in Gammell's case fully accords with the decision of the Supreme Court in *Gobald Motor Service Ltd. v. R.M.K. Veluswami*,¹² where it is observed that "the capitalized value", of the deceased's income subject to relevant deductions would be the loss caused to the estate of the deceased under Section 2. This observation occurs in the illustration which their Lordships gave to clarify the legal position and which reads as follows :

"An illustration may clarify the position. X is the income of the estate of the deceased, Y is the yearly expenditure incurred by him on his dependents (we will ignore the other expenditure incurred by him). X-Y, i.e. Z, is the amount he saves every year. The capitalized value of the income spent on the dependents, subject to relevant deductions is the pecuniary loss sustained, by the members of his family through his death the capitalized value of his income, subject to relevant deductions, would be the loss caused to the estate by his death. If the claimants under both the heads are the same, and if they get compensation for the entire loss caused to the estate, they cannot claim again under the head of personal loss the capitalized income that might have been spent on them it 'he deceased were alive. Conversely, if they got compensation under Section 1, representing the amount that the deceased would have spent on them, if alive, to

that extent there should be deduction in their claim under Section 2 of the Act in respect of compensation for the loss caused to the estate. To put it differently, it under Section 1 they got capitalised value of Y, under Section 2 they could get only the capitalized value of Z, for the capitalized value of Y+Z, i.e., X would be the capitalized value of his entire income."

6. We are clearly of opinion that damages recoverable for loss to the estate of the deceased under Section 2 of the Fatal Accidents Act must include damages for loss of earnings of the lost years, assessed in the manner laid down by the House of Lords in Gammell's case (1981-1 All England Reporter 578).

7. The decisions of the House of Lords in Pickett's case (1979-1 All England Reporter 774) and in Gammell's case show that damages in respect of loss of earnings of the lost years should be assessed after deduction of an estimated sum to represent the victim's probable living expenses during those years. In the instant case, having regard to the prospect of earning of the deceased after his passing out from I.T.I, we do not think that the deceased could have saved more than Rs. 100 per month on an average including the amount which he would have spent on the mother. Thus the annual loss of earning to the estate works out to Rs. 1,200. The deceased but for his death in the accident would have continued to earn up to the age of 58 years. The question then is what multiplier should be adopted in such cases. In Gammell's case the deceased was aged 15 years and the Court applied the multiplier of 16. As in the instant case the deceased was aged 19, we would apply the multiplier of 15. The total amount of damages on account of loss of earnings of the lost years thus works out to Rs. 18,000. We would also award a sum of Rs. 2,000 as damages for pain and suffering and loss of expectation of life of the deceased. The total amount of damages payable under Section 2 thus works out to Rs. 20,000.

8. We have already assessed the damages payable for loss of dependency under Section 1-A of the Fatal Accidents Act at Rs. 12,000. As the damages recoverable for loss to the estate under Section 2 far exceed the damages assessed under Section 1-A, we cannot award anything under Section 1-A to avoid duplication. We must, therefore, award a sum of Rs. 20,000 as compensation payable to the appellant No.7 Rewabai, the mother of the deceased.

9. The appeal is allowed. The amount of compensation is enhanced to Rupees 20,000

The entire amount shall be payable to appellant No.7 Rewabai. The amount shall carry interest at the rate of 6 per cent from 17th June 1977 which is the date of the claim application, till payment. The said appellant shall also recover proportionate costs of both the Courts from the respondents. The other parties shall bear their own costs throughout.

Appeal allowed.

Cases Referred.

1. AIR 1981 Mad Pra 173
2. (1978) 2 All England Reporter 604 (HL)
3. AIR 1962 SC 1
4. AIR 1970 SC 376
5. 1980 MPLJ 563
6. (1981) 1 All England Reporter 7 (HL)
7. (1962) 2 QB 210; (1961) 3 All England Reporter 333 (CA))
8. (1979) 1 All England Reporter 774 (HL)
9. (1966) 39 Aus LJ 480; Teubner v. Humble, (1963) 108 CLR 491
10. (1979) 2 All England Reporter 910
11. (1981) 1 All England Reporter 578
12. AIR 1962 SC 1