THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 27th MARCH, 2017

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.23 of 2015

Appellant : The Branch Manager,
National Insurance Company Limited,
Gangtok Branch,
NH 31-A,Gangtok,
P.O. & P.S. Gangtok,
East Sikkim.

versus

Respondents :

1. Shri Pankaj Kumar Balabhai Kapadia,
S/o Late Balabhai Vadilal Kapadia

2. Smt. Daxa Pankaj Kumar Kapadia,
W/o Shri Pankaj Kumar Balabhai Kapadia

3. Shri Raj Ritesh Kapadia,
S/o Raj Ritesh Balabhai Kapadia

All residents of A-7, Prerna Vihar Tower,
Near Rose Wood Estate,
Opposite Gokul Awas,
Jodhpur Village Road,
Jodhpur, Satellite,
Ahmedabad,
Gujarat.

4. Shri Krishna Prasad Giri
(Owner of accident vehicle),
S/o Late Bhim Lall Giri,
Presently residing at Tintek Busty,
Near Block Development Office,
P.O. Rakdong, P.S. Gangtok,
East Sikkim.

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Appearance

Mrs. Vidya Lama, Advocate for the Appellant.

Mr. Ajay Rathi, Ms. Phurba Diki Sherpa and Mr. Pramit Chhetri, Advocates for the Respondents No.1 to 3.

Mr. Ashok Pradhan, Advocate for Respondent No.4.

JUDGMENT

Meenakshi Madan Rai, J.

(1) The Learned Motor Accidents Claims Tribunal, North Sikkim, at Mangan (for short "Learned Claims Tribunal"), awarded compensation of a sum of Rs.6,17,500/- (Rupees six lakhs seventeen thousand and five hundred) only, to the Claimants No.1 to 3 (the Respondents No.1 to 3 herein), in MACT Case No.15 of 2014, vide Judgment dated 30-04-2014. The Appellant being aggrieved by the Award is before this Court contending that the notional income of the deceased victim, aged about eight years was assessed at Rs.200/- (Rupees two hundred) only, per day, thereby computing her monthly income at Rs.6,000/- (Rupees six thousand) only, which is unreasonable considering that the victim is a minor child and was not an earning member. Peripheral to this argument was the contention that rash and negligent driving was unproved. Hence, the Judgment be set aside.

(2) Repelling the arguments of the Appellant, Learned Counsel for the Respondents No.1 to 3 while placing reliance on the decision of ***Kishan Gopal and Another*** vs. ***Lala and Others***[1] canvassed that the Hon'ble Apex Court while considering the Appeal, relied on the legal principles laid down in the case of ***Lata Wadhwa and Others*** vs. ***State of Bihar and Others***[2] and held that as the deceased was ten years old and was undisputedly assisting

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1 (2014) 1 SCC 244

his parents, the Appellants, in their agricultural occupation, it would be just and reasonable to assess his notional income at Rs.30,000/- (Rupees thirty thousand) only. The multiplier of '15' was chosen by applying the legal principles laid down in ***Sarla Verma (Smt.) and Others*** vs. ***Delhi Transport Corporation and Another***[3] and Rs.50,000/- (Rupees fifty thousand) only, was added under conventional head towards loss of love and affection and funeral expenses, along with the awarded amount, with interest @ 9% per annum, which was directed to be paid to the Appellants. That, the ratiocination therein applies to facts of the instant case, consequently the Learned Claims Tribunal was not in error in granting the impugned Award along with interest @ 10% per annum.

(3) I have heard learned Counsel for the parties and perused the Case records.

(4) Before addressing the question of compensation, it is pertinent to draw attention to the Judgments of this Court in MAC App. No.25 of 2015 and MAC App. No.24 of 2015 pertaining to the same accident, in which the father and mother of the deceased victim also lost their lives, as this appeal also questions the finding of the Tribunal with regard to rash and negligent driving. In MAC App. No.25 of 2015 (*supra*), this Court held as follows;

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> "***14.*** Coming to the question of rash and negligent driving on the part of the driver, on this count again, the evidence of the Claimant's witness No.2, the survivor of the accident, establishes that despite repeated requests

2 (2001) 8 SCC 197
3 (2009) 6 SCC 121

> The recalcitrant driver continued driving rashly and speeding along the edge of the road. A finding of a Criminal Court is not binding on the Motor Accidents Claims Tribunal has been concluded in a number of decisions of various High Courts. It is to be reiterated that the standard of proof of "beyond reasonable doubt" being an indispensable requisite in criminal cases is not applicable to a Claim Petition. The Magisterial Court having discharged the offending driver in G. R. Case No.40 of 2014 pertaining to the instant accident, without even framing Charges when an event of such an enormity has taken place is another question which requires to be mulled over, which of course, is not appropriate here."

Thus, the question of rash and negligent driving was settled therein and requires no further consideration.

(5) The choice of multiplier of the learned Claims Tribunal in the instant matter cannot be faulted with, the same being in consonance with the decision of ***Amrit Bhanu Shali and Others*** VS. ***National Insurance Company Limited and Others***[4] and the Table of ***Sarla Verma*** (*supra*).

(6) While taking up the question of compensation, we may briefly revert to the decision of the Hon'ble Apex Court in ***Kishan Gopal*** (*supra*), relied on by the Respondents, which whilst considering the Award, set aside the impugned Judgment of the Learned Tribunal and the High Court and granted compensation of Rs.5,00,000/- (Rupees five lakhs) only, with interest @ 9% per annum. The victim therein was ten years old.

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(7) In ***Lata Wadhwa's*** case (supra), while considering compensation for children who had died during celebrations within

4 (2012) 11 SCC 738

the Tata Iron and Steel Company (TISCO) factory in a devastating fire which had engulfed the VIP Pandal, the assessment of compensation to children was made after dividing them into groups based on their age. The first group was between the age of 5 to 10 years and the second group between the age 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/- was held to be payable by way of compensation to which the conventional figure of Rs.25,000/- was added and as such a consolidated sum of Rs.75,000/- each was awarded. These amounts had been arrived at on calculations made by Shri Justice Y. V. Chandrachud. The Hon'ble Apex Court while considering the said compensation was of the opinion that the amount for the children between the age group of 5 to 10 years should be three times over the suggested amount, in other words, it should be Rs.1.5 lakhs to which the conventional figure of Rs.50,000/- was added making it a total of Rs.2 lakhs for each of the children.

(8) So far as the children between the age group of 10 to 15 years were concerned, they were all students of Class 6 to Class 10 and children of employees of TISCO, which has a tradition of employing one child of its employee, in the Company. Having regard to these facts, in their case, the contribution of Rs.12,000/- per annum was found to be on the lower side and the contribution was calculated to be Rs.24,000/-. The multiplier of '15' was found to be appropriate. What is apparent from the decisions *supra* is that the amount of compensation for children between the age of 5 to 10 years was assessed at a total amount of Rs.2,00,000/- (Rupees two lakhs) only, while for children between the age group of 10 to 15 years, another assessment was made.

(9) In ***Kishan Gopal*** *(supra)*, consideration was taken of the fact that the Rupee value has come down drastically from the year 1994 since the decision in ***Lata Wadhwa*** *(supra)* and hence, the notional income of the ten year old victim was placed at Rs.30,000/- (Rupees thirty thousand) only. Similarly, in the case at hand, despite the age of the victim being 8 years and not 10, but considering the fall of the Rupee value from 2014 (the year of the decision in ***Kishan Gopal***), and as the loss of a child cannot be compensated in pecuniary terms, as held in ***Lata Wadhwa,*** it would be appropriate to place the yearly notional income of the victim at Rs.30,000/- (Rupees thirty thousand) only, as was done in ***Kishan Gopal***. The multiplier of 15 is adopted as per the Table in ***Sarla Verma***, as also considering the decision in ***Amrit Bhanu Shali,*** wherein it was ruled that the age of the victim should be taken into consideration for choice of multiplier and not that of the claimants. Rs.50,000/- (Rupees fifty thousand) only, is granted under conventional heads towards loss of love and affection, funeral expenses and last rites.

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(10) The decisions in ***Lata Wadhwa (supra)*** and ***Kishan Gopal*** *(supra)*, reveal that the deduction of one third for the upkeep of the child had she been alive, was not made.

(11) In the light of the above discussions and findings, the compensation stands re-calculated and modified as follows;

Yearly notional income of the deceased	30,000 x 15=	Rs.	4,50,000.00
Add Loss of love and affection, Funeral expenses and last rites	**(+)**	Rs.	50,000.00
	Total =	**Rs.**	**5,00,000.00**

(Rupees Five Lakhs) only.

(12) The Claimants-Respondents No.1 to 3 shall be entitled to simple interest @ 9% per annum on the above amount with effect from the date of filing of the Claim Petition before the Learned Claims Tribunal, until its full realisation.

(13) The Appellant is directed to pay the awarded amount to the Claimants-Respondents No.1 to 3 within one month from today, failing which they shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by the Appellant-Insurance Company to the Claimants-Respondents No.1 to 3.

(14) The awarded amount of compensation shall be divided amongst the Claimants-Respondents No.1 to 3, as follows;

(i) 25% of the total award to the Claimant-Respondent No. 1.

(ii) 25% of the total award to the Claimant-Respondent No. 2.

(iii) 50% of the total award to the Claimant-Respondent No. 3, out of which 25% shall be kept in a Fixed

Deposit in a Nationalised Bank until he attains the age of majority. The remaining 25% shall be expended towards his education and upkeep.

15. The impugned Judgment of the Learned Claims Tribunal stands modified accordingly, and Appeal is allowed to that extent.

16. No order as to costs.

17. Copy of this Judgment be sent to the Learned Claims Tribunal.

18. Records of the Learned Claims Tribunal be remitted forthwith.

(Meenakshi Madan Rai)
Judge
27-03-2017

Approved for reporting : **Yes**

Internet : **Yes**

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