Kaushlya Devi vs Shri Karan Arora & Ors on 14 May, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1912, 2007 AIR SCW 3424, 2008 AIHC NOC 90, 2008 (1) SCC (CRI) 669, (2007) 4 PAT LJR 3, 2007 (7) SCALE 517, (2007) 56 ALLINDCAS 76 (SC), (2007) 5 CTC 173 (SC), (2007) 3 JCR 117 (SC), (2007) 4 JLJR 3, 2007 (11) SCC 120, (2008) 1 MAD LW 853, (2007) 3 ACJ 1870, (2007) 2 CAL LJ 45, (2007) 37 OCR 612, (2007) 3 ACC 10, (2007) 3 ALL WC 2113, (2007) 3 CURCC 1, (2007) 4 CIVILCOURTC 168, (2007) 5 MAD LJ 1269, (2007) 4 PUN LR 356, (2007) 4 RAJ LW 3068, (2007) 3 TAC 16, (2007) 4 SUPREME 29, (2007) 68 ALL LR 648, (2007) 4 CIVLJ 82, (2007) 3 RECCIVR 861, (2007) 138 DLT 776, (2007) 4 ANDH LT 61, (2007) 7 SCALE 517

Author: Arijit Pasayat

Bench: Arijit Pasayat, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (civil)  2479 of 2007

PETITIONER:
Kaushlya Devi

RESPONDENT:
Shri Karan Arora & Ors

DATE OF JUDGMENT: 14/05/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
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J U D G M E N T CIVIL APPEAL NO. 2479 OF 2007 (Arising out of S.L.P. (C) No.16500 of 2005) Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court which dismissed the appeal filed by the husband of the appellant. In the appeal, appellant was respondent no.4. The background facts in a nutshell are as follows:

> A claim petition was filed by the husband of the appellant, namely, Balwant Singh in terms of Sections 166, 140 and 141 of the Motor Vehicles Act, 1988 (in short the 'Act'). In the claim petition, the present appellant was impleaded as respondent no.4 while

> the driver of the vehicle no. HR 41/3347 and the owner of the vehicle were impleaded as respondents 1 and 2. The United India Insurance Company Ltd. (hereinafter referred to as the 'insurer') was impleaded as respondent no.3. In the claim petition filed on 15.3.1997 which was registered on 17.3.1997, it was alleged that the son of Balwant Singh (claimant) and the present appellant, died as a result of the vehicular accident in which the aforesaid car was involved. The deceased was aged about 14 years and was the only son of the appellant. The accident took place on 5.2.1997 when Karan Arora (respondent no.1) came to the house of the claimant and requested the deceased to accompany him in his car. The car was being driven by the said Karan Arora. The vehicle met with an accident. The deceased lost his life. A claim of Rs.10,00,000/- was made.

On receipt of the notice from the Motor Accident Claims Tribunal, Chandigarh (in short the 'Tribunal') responses were filed by the respondents. Respondent no.2 i.e. the owner of the vehicle stated that the driver was a minor and the claim petition was not maintainable against him. Though some other points were urged they were treated not to be of consequences by the Tribunal. The insurer took the stand that since the death of the deceased was never intimated to the insurer and also about the alleged accident, the petition appears to have been a collusive petition. The claim in the claim petition was that the deceased was earning Rs.10,000/- per month. The insurer took the stand that it was not liable as it was the admitted stand that the driver did not have any driving licence. The present appellant as respondent no.4 accepted the claim in the claim petition and prayed that the same be accepted and indicated that she was entitled to share in the amount of compensation.

The Tribunal on consideration of the rival stand came to hold that the accident took place in the manner described. Since the driver was a minor he did not have any liability but the owner of the vehicle was liable to pay compensation as per the award. It was further held that the insurer has no liability as the driver was not authorized to drive any vehicle. A sum of rupees one lakh was awarded along with 12% interest from the date of the claim till realization. The manner in which the amount was to be deposited was also indicated in the award. An appeal was preferred by the claimant Balwant Singh which as noted above was dismissed by the High Court.

In support of the appeal, learned counsel for the appellant submitted that the awarded amount is meagre and considering the background from which deceased came and his academic career the award should have been more. Learned counsel for the owner of the vehicle on the other hand supported the order. Similar was the stand of the insurance company.

In Mallett v. McMonagle 1970 (AC) 166, Lord Diplock analysed in detail the uncertainties which arise at various stages in making a rational estimate and practical ways of dealing with them. In Davies v. Taylor (1974) AC 207, it was held that the Court, in looking at future uncertain events, does not decide whether on balance one thing is more likely to happen than another, but merely puts a value on the chances. A possibility may be ignored if it is slight and remote. Any method of calculation is subordinate to the necessity for compensating the real loss. But a practical approach to the calculation of the damages has been stated by Lord Wright in Davies v. Powell Duffryn

Associated Colleries Ltd. (1942) 1 All ER 657, in the following words:

> "The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required to be spent for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase."

In State of Haryana and Anr. v. Jasbir Kaur and Ors. (2003(7) SCC 484) it was held as under:

> "7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages"

which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just" denotes equitability, fairness and reasonableness, and non-arbitrary. if it is not so it cannot be just. (See Helen C. Rebello v. Maharashtra SRTC (1999(1) SCC 90) 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.

In case of the death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's life-time. But this will not necessarily bar the parent's claim and prospective loss will find 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 (1913) AC 1, 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." (See Lata Wadhwa and Ors. v. State of Bihar and Ors. (2001 (8) SCC 197) This Court in Lata Wadhwa's case (supra) while computing compensation made distinction between deceased children falling within the age group of 5 to 10 years and age group of 10 to 15 years.
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> 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.
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> These aspects were highlighted in New India Assurance Co. Ltd. v. Satender and Ors. (AIR 2007 SC 324). Applying the principles indicated in last named case (supra) to the facts of the present case, and the fact that the husband of the appellant has already died, we find no scope for interference with the quantum awarded.

The appeal deserves dismissal which we direct.