Rajendra Singh vs National Insurance Company Ltd. on 18 June, 2020

Equivalent citations: AIRONLINE 2020 SC 595

Author: Navin Sinha

Bench: Rohinton Fali Nariman, Navin Sinha, B.R. Gavai

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 2624 OF 2020
(arising out of SLP (Civil) No(s). 13964 of 2018)

RAJENDRA SINGH AND OTHERS ...APPELLANT(S)

VERSUS

NATIONAL INSURANCE COMPANY
LIMITED AND OTHERS ..RESPONDENT(S)

WITH

CIVIL APPEAL NO(s). 2625 OF 2020
(arising out of SLP (Civil) No(s). 16261 of 2018)

RAJENDRA SINGH ...APPELLANT(S)

VERSUS

NATIONAL INSURANCE COMPANY
LIMITED AND OTHERS ..RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. The High Court by the impugned order dismissed two appeals arising from separate orders of the Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') deciding two accident compensation claims. The appellants had claimed further enhancement of compensation.

3. The deceased in the first appeal was a housewife aged about 30 years. The second deceased was her daughter aged about 12 years. The claimants are the husband/father of the deceased and three

minor siblings. The two deceased on 25.12.2012 were travelling in a horse cart along with some others to a religious congregation. The horse cart was hit by a bus resulting in their death. The Tribunal assessed the notional income of the first deceased at Rs.36,000/-per annum and after 1/4 th deduction towards personal expenses, with a multiplier of 17 awarded a compensation of Rs.4,59,000/- The Tribunal then deducted 50% on ground of contributory negligence as the horse cart was stated to have been in the middle of the road when the accident took place. A sum of Rs.1,00,000/-was then added as loss of consortium and Rs.25,000/-towards funeral expenses leading to an award total of Rs.3,54,500/-with interest at the rate of 7.5%.

4. In so far as the minor child is concerned, the notional income was assessed at Rs.36,000/-per annum, applying a 50% deduction towards personal expenses with a multiplier of 15, the compensation was awarded at Rs.2,70,000/-out of which 50% was again deducted towards contributory negligence. A sum of Rs.25,000/-was added towards funeral expenses, leading to an award total of Rs.1,60,000/-with interest at the rate of 7.5%.

5. The appeal for enhancement of compensation was dismissed by the High Court and thus the present appeals.

6. Learned counsel for the appellant submits that the notional income of the first deceased has been wrongly fixed ignoring her income of Rs.5000/-per month from dairy farm business. Nothing has been awarded towards future prospects. With regard to the second deceased it was submitted that she was studying in a school and her notional income should have been assessed at Rs.54,000/-per year. Nothing has been awarded towards loss of estate, loss of consortium and funeral expenses. The common submission in both the appeals was that deduction on ground of contributory negligence was unsustainable and unjustified. Reliance was placed on Kajal vs. Jagdish Chand & Ors., AIR 2020 SC 776, to contend that the income of the deceased child should have been assessed at Rs.4846/-per month.

7. Learned counsel for the respondents submitted that the present appeals do not merit interference. There is no evidence with regard to the claimed business income of the first deceased. The finding of contributory negligence merits no interference. In absence of any proof of income, the question of future prospects simply does not arise. Similarly, the second deceased was a minor school going child who also had no income and therefore the question for grant of future prospects with regard to her also does not arise.

8. We have considered the submission on behalf of the parties. No evidence has been led by the appellant with regard to any income of the first deceased from dairy business. The deceased were travelling in a horse cart along with others to a religious congregation. It is not the case of the respondents that the first deceased was driving the horse cart or was the owner of the same, much less that it was being driven under her supervision. The deceased were travelling as passengers along with others. The fact that the horse cart may have been in middle of the road at the time of the accident, no fault can be attributed to the deceased holding them liable to contributory negligence and denial of full compensation. We fail to understand how the deceased who were passengers in the horse cart can be held liable in any manner. The deduction of 50% towards contributory

negligence in both the appeals is therefore held to be totally unjustified and unsustainable. The finding with regard to contributory negligence against both the deceased are therefore set aside.

9. The first deceased was a housewife aged about 30 years. In Lata Wadhwa vs. State of Bihar, (2001) 8 SCC 197, this court had observed that considering the multifarious services rendered by housewives, even on a modest estimation, the income of a housewife between the age group of 34 to 59 years who were active in life should be assessed at Rs 36,000 per annum. A distinction was also drawn with regard to elderly ladies in the age group of 62 to 72 who would be more adept in discharge of housewife duties by age and experience, and the value of services rendered by them has been taken at Rs 20,000 per annum.

10. In Arun Kumar Agrawal vs. National Insurance Co. Ltd., (2010) 9 SCC 218, the Tribunal assessed the notional income of the housewife at Rs.5,000/- per month, but without any rational or reasoning concluded that she was a non-earning member and reduced the same to Rs.2,500/-, which was affirmed by the High Court. Disapproving the same and restoring the assessed income, this Court observed at Paragraphs 26 and 27 as follows:

> "26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of the husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean, etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.
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> 27. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. the husband and children. However, for the purpose of award of compensation to the dependants, some pecuniary estimate has to be made of the services of the housewife/mother. In that context, the term "services" is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a grandmother may volunteer to render some of the services to the family which the deceased was giving earlier."

11. The notional income of the first deceased is therefore held to be Rs.5000/- per month at the time of death. The compensation on that basis with a deduction of 1/4th i.e. Rs.15,000/- towards personal expenses with a multiplier of 17 is assessed at Rs.7,65,000/-. If the deceased had survived, in view of observations in Lata Wadhwa (supra), her skills as a matured and skilled housewife in contributing to the welfare and care of the family and in the upbringing of the children would have only been enhanced by time and for which reason we hold that the appellants shall be entitled to future prospects at the rate of 40% in addition to the loss of consortium and future expenses already granted. We therefore assess the total compensation payable to the appellants in the first appeal at Rs.11,96,000/-.

12. The second deceased was a school going child aged about 12 years. She had a whole future to look forward in life with all normal human aspirations. She died prematurely due to the accident at a very tender age for no fault of hers even before she could start to understand the beauty and joys of life with all its ups and downs. The loss of a human life untimely at childhood can never be measured in terms of loss of earning or monetary loss alone. The emotional attachments involved to the loss of the child can have a devastating effect on the family which needs to be visualised and understood. Grant of non-pecuniary damages for the wrong done by awarding compensation for loss of expectation in life is therefore called for. Undoubtedly the injury inflicted by deprivation of the life of the child is very difficult to quantify. The future also abounds with uncertainties. Therefore, the courts have used the expression "just compensation" to get over the difficulties in quantifying the figure to ensure consistency and uniformity in awarding compensation. This determination shall not depend upon financial position of the victim or the claimant but rather on the capacity and ability of the deceased to provide happiness in life to the claimants had she remained alive. The compensation is for loss of prospective happiness which the claimant would have enjoyed had the child not died at the tender age. Since the child was studying in a school and opportunities in life would undoubtedly abound for her as the years would have rolled by, compensation must also be granted with regard to future prospects. It can safely be presumed that education would have only led to her better growth and maturity with better prospects and a bright future for which compensation needs to be granted under non-pecuniary damages. (See R.K. Malik vs. Kiran Pal, (2009) 14 SCC 1).

13. The income of the minor girl child is incapable of precise fixation. We find no reason to interfere with the assessed notional income of the second deceased. In R.K. Malik vs. Kiran Pal, (2009) 14 SCC 1, considering grant of future prospects for the deceased child aged about 10 years it was observed as follows:

> "32. A forceful submission has been made by the learned counsel appearing for the appellant claimants that both the Tribunal as well as the High Court failed to consider the claims of the appellants with regard to the future prospects of the children. It has been submitted that the evidence with regard to the same has been ignored by the courts below.
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> 33. On perusal of the evidence on record, we find merit in such submission that the courts below have overlooked that aspect of the matter while granting compensation.

> It is well□settled legal principle that in addition to awarding compensation for pecuniary losses, compensation must also be granted with regard to the future prospects of the children. It is incumbent upon the courts to consider the said aspect while awarding compensation…"

14. In New India Assurance Co. Ltd. vs. Satender, (2006) 13 SCC 60, the deceased victim of the accident was a nine year old school going child. Considering the claim for loss of future prospects in absence of a regular income, it was observed that the compensation so determined had to be just and proper by a judicious approach and not fixed arbitrarily or whimsically. The uncertainties of a young life were noticed in the following terms:□"12. 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."

15. The deduction on account of contributory negligence has already been held by us to be unsustainable. The determination of a just and proper compensation to the appellants with regard to the deceased child, in the entirety of the facts and circumstances of the case does not persuade us to enhance the same any further from Rs.2,95,000/□by granting any further compensation under the separate head of "future prospects". It may only be noticed that R.K. Malik (supra) does not consider Satender (supra) on the grant of future prospects as far as children are concerned.

16. Kajal (supra) is distinguishable on its own facts. The victim of the accident was a nine month old child, whose disability certificate reflected that she would grow up to be an adult lying on the bed with all the physical and biological attributes of a woman on attaining adulthood, but her mind would remain of a nine month old child because of the accident. The case is completely distinguishable on its own facts and did not arise out of a death claim, leading to award of compensation towards expenses for frequent treatment, hospitalization, transportation, loss of future earnings, attendant charges, pain, suffering, loss of amenities, loss of marriage prospects and future medical treatment etc.

17. The Civil Appeal arising out of SLP (C) No. 13964 of 2018 is allowed and the Civil Appeal arising out of SLP (C) No. 16261 of 2018 is allowed to the extent indicated only.

.....J. (Navin Sinha) .....J. (B.R. Gavai) New Delhi, June 18, 2020