

MEENA DEVI

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v.

NUNU CHAND MAHTO @ NEMCHAND MAHTO & ORS.

(Civil Appeal No. 7255 of 2022)

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OCTOBER 13, 2022

**[SANJIV KHANNA AND J. K. MAHESHWARI, JJ.]**

*Motor Vehicles Act, 1988: ss. 140, 166 rw s.171 – Compensation – Enhancement of – Death of 12 year old boy in a motor accident – Tribunal awarded lump sum compensation of Rs. 1,50,000/-, while the High Court enhanced it to Rs. 2,00,000/- up to the value of the claim petition – On appeal, held: Less valuation, if any, made in the claim petition would not be impediment to award just compensation exceeding the claimed amount – Tribunal/court ought to award ‘just’ compensation which is reasonable in the facts relying upon the evidence produced on record – On facts, the amount of compensation not just and reasonable looking to the computation made – As per the ocular statement of the mother of the deceased, it is clear that deceased was a brilliant student, studying in a private school, thus, accepting the notional earning as Rs. 30,000/- including future prospect and applying the multiplier of 15, the loss of dependency comes to Rs. 4,50,000/- and adding Rs. 50,000/- in conventional heads, the total sum of compensation would be Rs. 5,00,000/- – Thus, the compensation as awarded by the High Court enhanced by Rs. 3,00,000/-, in addition.*

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*Kishan Gopal and another vs. Lala and others (2014)  
1 SCC 244 : [2013] 10 SCR 793 – relied on.*

*R.K. Malik and another vs. Kiran Pal and others (2009)  
14 SCC 1 : [2009] 10 SCR 87; Sarla Verma & Others  
vs. Delhi Transport Corporation and Another (2009) 6  
SCC 121 : [2009] 5 SCR 1098; Lata Wadhwa and  
others vs. State of Bihar and others (2001) 8 SCC 197  
: [2001] 1 Suppl. SCR 578; M.S. Grewal & another vs.  
Deep Chand Sood & others (2001) 8 SCC 151 : [2001]  
2 Suppl. SCR 156; Kurvan Ansari @ Kurvan Ali &  
another vs. Shyam Kishore Murmu and another (2022)*

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- A **1 SCC 317; Nagappa vs. Gurdyal Singh and others (2003) 2 SCC 274 : [2002] 4 Suppl. SCR 499 – referred to.**

*Taff Vale Rly. Vs. Jenkins 1913 AC 1 – referred to.*

<u>Case Law Reference</u>		
B	[2009] 10 SCR 87	referred to
	[2013] 10 SCR 793	relied on
	[2009] 5 SCR 1098	referred to
C	[2001] 1 Suppl. SCR 578	referred to
	[2001] 2 Suppl. SCR 156	referred to
	(2022) 1 SCC 317	referred to
	[2002] 4 Suppl. SCR 499	referred to
D	CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7255 of 2022.	

From the Judgment and Order dated 24.10.2018 of the High Court of Jharkhand at Ranchi in M.A. No. 16 of 2013.

D. P. Chaturvedi, Anuj Verma, Ramesh Kumar Mishra, Advs. for E the Appellant.

Anup Kumar, Ms. Shruti Singh, Ms. Anuradha Mutatkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

F **J. K. MAHESHWARI, J.**

Leave granted.

- G 2. The facts relevant for disposal of the present case are that the child, namely; Bankee Bihari, aged about 12 years on the date of accident i.e. 29.7.2003, while playing in front of his house, was dashed by the Commander Jeep bearing registration No. JH-11A 6894 and died on the way, while being taken to a hospital in Dhanbad. A Claim Petition under Sections 140, 166 read with Section 171 of Motor Vehicles Act, 1988 (for short, “the M.V. Act”) seeking compensation to the tune of Rs. 2,00,000/- with interest was filed by the appellant, H who is the mother of the deceased child.

3. Motor Accident Claims Tribunal, Giridih (for short, "M.A.C.T.") A granted compensation to the tune of Rs. 1,50,000/- in lump sum. On assailing the inadequacy of such an award by filing Miscellaneous Appeal No. 16 of 2013, the High Court of Jharkhand at Ranchi enhanced the amount of compensation to Rs. 2,00,000/- equivalent to the value of the claim made in the Claim Petition.

4. The adequacy of grant of such compensation has been questioned by filing the present appeal, inter alia, contending that the High Court erred in assessing the amount in the heads of "pecuniary" and "non-pecuniary" loss. MACT and the High Court have not granted any amount under the head "loss of prospective happiness" and other conventional heads and the amount as granted under the head of loss of dependency is inadequate. Therefore, the compensation may be enhanced. Placing reliance on the judgment of this Court in *R.K. Malik and another vs. Kiran Pal and others* (2009)14 SCC 1, it is urged that the High Court committed error in assessing the less quantum for notional income of the deceased without adding 'future prospect' while computing the compensation. Reliance has further been placed on the judgment of this Court in the case of *Kishan Gopal and another vs. Lala and others* (2014) 1 SCC 244 wherein the compensation has been calculated treating Rs. 30,000/- as notional income including future prospects in place of Rs. 15,000/- as specified in the II<sup>nd</sup> Schedule of the M.V. Act and applying the multiplier as specified in the judgment of *Sarla Verma & Others vs. Delhi Transport Corporation and Another* (2009) 6 SCC. 121. It is further contended that in case of death, just and reasonable amount of compensation ought to be awarded along with interest as permissible. It is urged that the valuation of the claim is immaterial to grant just and reasonable compensation, however the High Court committed error restricting the compensation equal to valuation of Claim Petition.

5. Mr. Anup Kumar and Ms. Anuradha Mutatkar, Advocates have filed vakalatnama on behalf of respondent Nos. 1 and 2 respectively. No one appeared on behalf of respondent Nos. 3 and 4, though notice was served on them.

6. Per contra, learned counsel appearing on behalf of the respondent Nos. 1 and 2 urged that the compensation as awarded by the MACT and High Court is just and proper, however supporting the findings, as recorded by the two Courts, contended that the appeal deserves to be dismissed.

- A        7. Having heard learned counsel for the parties and on perusal of the findings, the liability of the Insurance Company is not in dispute and only the quantum is questioned by the claimant. Therefore, on the point of liability of respondent No. 4-Insurance Company, we approve the finding of the High Court.
- B        8. Reverting to computation of compensation in the facts of this case, a child died in a road accident at the age of 12 years while playing in front of his house. He was studying in 5<sup>th</sup> class in Nehru Academy, Giridih Road, Jamtara, Dumri, however it is required to be seen how the computation of compensation may be made. As per the ocular statement given by her mother, it is clear that the deceased child was a brilliant student of Class 5 and if he had not met with the accident, he would have definitely become an officer in future. In the said factual matrix, the compensation is required to be determined.
- C        9. In the judgment of **R.K. Malik** (*supra*), 29 children going in a school bus died by drowning in Yamuna River while the offending vehicle fell down, breaking the railings of the bridge in a road accident, took place in November, 1997. In the said case this Court held that the principle for determination of the compensation may be observed applying the II<sup>nd</sup> Schedule of M.V. Act and the appropriate multiplier considering the age of parents. It has also been said that the claim with regard to the future prospects should have been addressed by the Courts based on the performance and the reputation of the school. In the said case, the principles laid down by this Court in the case of **Lata Wadhwa and others vs. State of Bihar and others** (2001) 8 SCC 197 and **M.S. Grewal & another vs. Deep Chand Sood & others** (2001) 8 SCC 151 have been followed and enhancement was made. In the case of **Lata Wadhwa** (*supra*), it was clarified that the compensation may be awarded dividing the children in the age groups of 5 to 10 and 10 to 15 years. It is held that such grant of compensation will not necessarily bar the parents to claim prospective loss and it will be valid. This Court also relied upon the principles as laid down by the House of Lords in the famous case of **Taff Vale Rly. Vs. Jankins 1913 AC 1**, wherein Lord Atkinson observed as thus:
- H        “...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.”

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10. Thus relying upon the observation, it is said that in place of issuing any guidelines for determination of compensation in case of death of a child, it may be left open to be decided in the facts and circumstances of each case. In the case of *M.S. Grewal* (supra), 14 school students died due to drowning in a river. This Court noticing that the students were belonging to upper middle class background, however awarded the compensation to the tune of Rs.5,00,000/-. Thereafter in the case of *Kishan Gopal* (supra), a child aged about 10 years died in a road accident took place on 19.7.1992, this Court made departure from the II<sup>nd</sup> Schedule of M.V. Act and accepted the notional income of Rs. 30,000/- in place of Rs. 15,000/- applying the analogy that the value of rupee has come down drastically since 1994 when the notional income of Rs. 15000/- was fixed in II<sup>nd</sup> Schedule of the MV Act. However accepting the notional income as Rs. 30,000/- and as per the age of the parents i.e. 36 years, the loss of dependency was calculated applying the multiplier of 15 at Rs. 4,50,000/- and a sum of Rs. 50,000/- was awarded under conventional heads awarding a total sum of compensation of Rs. 5,00,000/-.

11. Recently in the case of *Kurvan Ansari @ Kurvan Ali & another vs. Shyam Kishore Murmu and another* (2022) 1 SCC 317, wherein a child aged about 7 years died in a road accident took place on 6.9.2004, this Court taking notional income as Rs. 25,000/-, applying the multiplier of 15, calculated the loss of dependency as Rs. 3,75,000/- and adding Rs. 55,000/- in conventional heads, awarded Rs. 4,70,000/-.

12. In view of the foregoing decisions, it is apparent that in the cases of child death, the notional income of Rs. 15,000/- as specified in the II<sup>nd</sup> Schedule of M.V. Act has been enhanced on account of devaluation of money and value of rupee coming down from the date on which the II<sup>nd</sup> Schedule of M.V. Act was introduced and the said notional income was treated as Rs. 30,000/- in the case of *Kishan Gopal* (supra)

A and Rs. 25,000/- in *Kurvan Ansari* (supra) in age group of 10 and 7 years respectively.

13. Thus applying the ratio of the said judgments, looking to the age of the child in the present case i.e. 12 years, the principles laid down in the case of *Kishan Gopal* (supra) are aptly applicable to the facts of B the present case. As per the ocular statement of the mother of the deceased, it is clear that deceased was a brilliant student and studying in a private school. Therefore, accepting the notional earning Rs. 30,000/- including future prospect and applying the multiplier of 15 in view of the decision of this Court in *Sarla Verma* (supra), the loss of dependency comes to Rs. 4,50,000/- and if we add Rs. 50,000/- in conventional heads, C then the total sum of compensation comes to Rs. 5,00,000/-. As per the judgment of MACT, lump sum compensation of Rs. 1,50,000/- has been awarded, while the High Court enhanced it to Rs. 2,00,000/- up to the value of the Claim Petition. In our view, the said amount of compensation is not just and reasonable looking to the computation made hereinabove.
- D Hence, we determine the total compensation as Rs. 5,00,000/- and on reducing the amount as awarded by the High Court i.e. Rs. 2,00,000/-, the enhanced amount comes to Rs. 3,00,000/-.

14. At this stage, it is necessary to clarify that as per the decision of a Three-Judge Bench of this Court in *Nagappa vs. Gurdyal Singh and others* (2003) 2 SCC 274, it was observed that under the MV Act, E there is no restriction that the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award ‘just’ compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award just compensation F exceeding the claimed amount.

15. Accordingly, this appeal is allowed. The amount of compensation, as awarded by the High Court is enhanced by Rs. 3,00,000/-, in addition. The total amount of compensation would be Rs. 5,00,000/-. The enhanced amount shall carry interest @ 7% p.a. from the date of Claim Petition till G realization. The due amount be paid by the respondent No. 4 – United India Insurance Company within a period of four weeks from today.

16. The parties to bear their own costs.