

New India Assurance Co.Ltd vs Yogesh Devi & Ors on 10 February, 2012

Equivalent citations: AIR 2012 SUPREME COURT 945, 2012 AIR SCW 1519, 2012 AAC 931 (SC), 2013 (1) AJR 470, (2012) 2 JCR 142 (SC), (2014) 1 CPR 282, 2012 (2) SCC(CRI) 215, (2012) 3 ALLMR 460 (SC), 2012 (2) SCALE 409, (2012) 111 ALLINDCAS 93 (SC), AIR 2012 SC (CIVIL) 957, (2012) 2 PUN LR 535, (2012) 1 WLC(SC)CVL 597, (2012) 1 ACC 649, (2012) 2 ALL WC 1726, (2012) 2 CIVLJ 892, (2012) 114 CUT LT 305, (2012) 3 MPHT 1, (2011) 3 CIVILCOURTC 726, (2012) 1 SIM LC 24, (2012) 111 ALLINDCAS 579 (HP), (2012) 2 TAC 1, (2012) 2 SCALE 409, (2012) ACJ 702, (2012) 91 ALL LR 202, (2012) 3 CIVLJ 743, (2012) 1 CURCC 184, (2012) 4 ANDHLD 101

Bench: J. Chelameswar, P. Sathasivam

Non-reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1987 OF 2012

(Arising out of SLP (Civil) No.17186 of 2009)

New India Assurance Co. Ltd.

....Appellant

Versus

Yogesh Devi & Ors.

....Respondents

J U D G M E N T

Chelameswar, J.

Leave granted.

2. One Vijender Singh along with two others Bhagwan Das and Manish, was travelling by a motor cycle on 10-12-2002. The said motor cycle was hit by a truck bearing registration No. RJ-14G- 1556, resulting in the death of both Vijender Singh and Bhagwan Das. Respondent No.1 is the wife, Respondents 2 to 5 are the children, Respondent No.6, we are informed, is the mother of the deceased Vijender Singh. Respondents 1 to 6 herein filed an application against the appellant herein and others for compensation. The appellant, admittedly, is the insurer of the abovementioned truck. A huge claim of Rs.1,86,30,000/-, was made towards compensation on the ground that the deceased Vijender Singh was earning more than Rs.35,000/- per month. The Tribunal, by its Judgment dated 06-02-2006, awarded an amount of Rs.10,00,000-00 and provided for appropriate deductions for the amounts, which had already been paid and also gave necessary directions for safeguarding the interest of the minor children.

3. From the Judgment of the Tribunal it appears that the claimants based their claim on the facts that the deceased Virender Singh was the owner of three vehicles (mini buses) and also certain agricultural land. It appears from the record that no evidence regarding the amount of income derived from the above mentioned properties is adduced. The only evidence available is the statement of the 1st respondent that the deceased used to give her an amount of Rs.35,000/- per month. She also admitted in her cross examination that the deceased was not filing any income tax returns. Therefore, the Tribunal reached a conclusion that the The petitioners are not entitled to any other compensation and they are held entitled to receive the following amount of compensation:

1. On a/c of loss of dependency from income = Rs.9,60,000.00

2. For loss of consortium to Petitioner No.1 = Rs.

10,000.00

3. For loss of love and affection to petitioner No.2 to 6 @ 5000/- each = Rs.

25,000.00

4. For funeral expenses = Rs.

5,000.00

Total Rs. 10,00,000.00 statement of the 1st respondent, that the deceased was earning more than Rs.35,000/-, cannot be believed. However, the Tribunal opined as under:

"Thus keeping in view the fact of ownership of two buses and one bus given on contract and the agriculture land it can be said that the deceased was earning Rs.3900/-per month in the capacity of the driver of a bus. Keeping in view the remaining buses and agriculture land it will be appropriate to hold the income of the deceased at Rs.7380/- because in case he would have earned more than the said amount, he must have filed the income tax return. If the deceased would remain alive he must have spent 1/3rd upon himself, therefore it would be appropriate to hold the monthly dependency at Rs.5000/-."

4. Aggrieved by the said determination of the compensation made by the Tribunal, the claimants as well as the appellant herein carried the matter in Appeal to the High Court of Rajasthan. Admittedly, the Appeal preferred by the appellant herein was dismissed, whereas the Appeal preferred by the claimants (S.B. Civil Misc. Appeal No.1222 of 2006) was partially allowed modifying the Award of the Tribunal. The High Court by its Judgment dated 30-01-2009 opined that the deceased Vijender Singh's income should be taken at Rs.24,000/- per month of which 1/3rd is treated to be an amount, which the deceased would have spent on himself and the balance on the claimants. Therefore, the High Court concluded that the claimants are entitled for a compensation of Rs.30,72,000/-, and directed:

"However, the rest of the award is confirmed. The Insurance Company is directed to pay the enhanced amount along with an interest @ 6% per annum from the date of the filing of the claim petition i.e. 24.3.03 till the realization to the claimants within a period of two months. The learned Tribunal is directed to insure that the enhanced amount of compensation is paid to the claimants within a period of two months from the date of receipt of the certified copy of this judgment."

Hence, the present Appeal.

5. The learned counsel for the appellant Sri M.K. Dua argued that the High Court grossly erred in coming to a conclusion that the income of the deceased should be determined at Rs.24,000/- per month. Such a determination is without any factual basis or evidence on record and therefore, contrary to the principle of law laid down by this Court in a catena of decisions, more particularly, in State of Haryana & Anr. Vs. Jasbir Kaur & Ors., (2003) 7 SCC 484, and, therefore, the Judgment under appeal cannot be sustained.

6. On the other hand, it is very strenuously argued by Sri Ashwani Garg, learned counsel for the claimants, that in view of the fact that there are six dependents on the deceased, of whom, four are school-going children, who are required to be educated by the 1st respondent widow, the High Court rightly enhanced the compensation and the Judgment under Appeal does not call for any interference by this Court.

7. This Court in Jasbir Kaur case (supra) held that the Tribunal is required to make a just and reasonable Award determining the compensation to be paid to the dependents of the victim of a fatal motor vehicle accident. Explaining the concept of just and reasonable Award in the context of a

motor vehicle accident claim, this Court held as follows:

"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 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 on 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 Vs. Maharashtra State Road Transport Corporation*, AIR1998SC3191)."

8. Keeping the above principle in view, we must now examine the correctness of the conclusion arrived at by the Judgment under Appeal that the income of the deceased Virender Singh is to be taken at Rs.24,000/- per month. The reasoning of the High Court in that regard is as follows:

" While trying to assess his income, the learned Tribunal has concluded that as a driver he must have been earning Rs.3900/- per month and his total income would have been 7500/- per month. However, considering the fact that Vijendra Singh would have earned Rs.3900/- per month as a driver, it is difficult to believe that he would have earned merely Rs.3600/- from the two buses owned by him. There is no evidence produced by the respondent No.3 to show that the buses were not being plied. Considering the lack of transportation buses are plied. Thus, it is difficult to believe that in the transportation business, owner of two buses would have earned merely Rs.3600/- per month from two buses. Therefore, the logic of the learned Tribunal is highly questionable. If the figure of Rs.3900/- has a reasonable assessment of the salary of a driver, obviously the owner of two buses would have earned more than Rs.3900/- to the driver of his own bus. Thus, a reasonable assessment would be that the owner of bus would be earning atleast Rs.10,000/- from each bus. Therefore, Vijendra Singh's income should be taken as Rs.23,900/- per month or Rs.24,000/- in the round."

In other words, in view of the Tribunal's conclusion that Vijender Singh was earning an amount of Rs.3900/- in his capacity as the driver of the bus per month, the High Court reached the conclusion that in his capacity as the owner of three buses, he must be deriving a much higher income from the buses. We agree with the logic of the High Court. However, the quantum of such income would depend upon various factors, such as; whether it is a stage carriage or a contract carriage, the condition of the bus, its seating capacity, the route on which it is plying, the cost of maintenance, the taxes to be paid on such business etc. But, the question is whether the income (either gross or net) derived by the owner of a bus could legally form the basis for determining the amount of compensation payable to his dependents, if he happens to die in a motor vehicle accident.

9. In our opinion, such an income cannot form the legal basis for determining the compensation.

10. In Jasbir Kaur case (supra), the claim was based on an assertion that the deceased was an agriculturist earning an amount of Rs.10,000/- per month by cultivating his land. Dealing with the question, this Court held:

"8. xxxxxxxxx. The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered."

11. Coming to the case on hand, the claim is based on the assertion that the deceased owned agricultural land apart from the abovementioned three mini-buses. The High Court rejected the claim insofar as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family. Unfortunately, the High Court failed to see that the same logic would be applicable even to the income from the abovementioned three buses. The asset (three mini-buses) would still continue with the family and fetch income. The only difference, perhaps, would be that during his life time the deceased was managing the buses, but now, the claimants may have to engage some competent person to manage the asset, which, in turn, would require some payment to be made to such a manager. To the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset. Therefore, the amount required for engaging the service of a manager and the salary payable to a driver - as it is asserted that the deceased himself used to drive one of the three buses - would be the loss to the claimants. In the normal course the claimants are expected to adduce evidence as to what would be the quantum of depletion in the income from the abovementioned asset on account of the abovementioned factors. Unfortunately, no such evidence was led by the claimants.

12. In the circumstances, the Judgment under Appeal cannot be sustained as the finding of the High Court that the claimants lost an amount of Rs.16,000/- per month due to the death of Vijender Singh is neither based on any evidence nor the logic adopted by the High Court for arriving at such a conclusion is right. In the normal course, the matter should have been remitted to the Tribunal for further evidence for ascertaining of the basis upon which the compensation is to be determined. But having regard to the fact that the accident occurred a decade ago, we do not propose to remit the

matter for further evidence.

13. The High Court opined that the deceased would have contributed an amount of Rs.16,000/- per month to the dependents, whereas the Tribunal opined that the deceased would have contributed an amount of Rs.5,000/-. Both the Courts below proceeded to arrive at the abovementioned amounts on the basis that as a driver of one of the buses, he was getting a salary of Rs.3,900/- per month. In the circumstances, making a reasonable conjecture that somebody to be employed for the purpose of managing the business of the three mini-buses, would certainly demand a higher salary than a driver, we think it reasonable to notionally fix the salary of such manager at Rs.10,000/- per month. The said amount coupled with the salary of one driver, i.e., Rs.3,900/- would be the loss sustained by the family from the income arising out of the asset. Computed on the basis of the said figure and applying the same multiplier of 16 which was applied by both the courts below, the amount of compensation payable to the claimants would be:

$$13,900 \times 12 \times 16 = \text{Rs.}26,68,800/-$$

14. The Judgment under Appeal shall stand modified accordingly and remain unaltered in all other respects. Appeal stands disposed of.

.....J. (P. SATHASIVAM)J. (J. CHELAMESWAR)
New Delhi;

February 10, 2012.