The Municipal Corporation Of Greater ... vs Shri Laxman Iyer And Anr on 27 October, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4182, 2003 (8) SCC 731, 2003 AIR SCW 5505, 2004 (3) SRJ 291, 2004 SCC(CRI) 252, (2004) 13 ALLINDCAS 472 (SC), (2004) 2 ALLMR 316 (SC), 2004 (13) ALLINDCAS 472, 2004 (1) UJ (SC) 350, 2003 (9) SCALE 2, 2003 (6) SLT 706, (2003) 8 JT 108 (SC), 2003 (3) BLJR 2325, (2003) 3 ACC 551, (2003) 3 MAD LJ 657, (2004) 2 MAH LJ 668, (2004) WRITLR 183, (2004) SC CR R 1316, (2003) 4 CURCC 220, (2003) 12 INDLD 81, (2004) 1 MAD LJ 82, (2004) 2 MAD LW 15, (2004) 2 MPLJ 267, (2004) 1 PUN LR 446, (2004) 1 TAC 3, (2003) 7 SUPREME 492, (2003) 4 RECCIVR 764, (2003) 9 SCALE 2, (2004) 1 WLC(SC)CVL 40, (2004) 1 ACJ 53, (2004) 54 ALL LR 427, (2004) 1 ALL WC 176, (2004) 1 ANDHWR 83, (2004) 3 CIVLJ 84, (2004) 1 CURLJ(CCR) 361, (2004) 2 BOM CR 75, 2004 (1) BOM LR 308, 2004 BOM LR 1 308

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Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  8424 of 2003

PETITIONER:
The Municipal Corporation of Greater Bombay

RESPONDENT:
Shri Laxman Iyer and Anr.

DATE OF JUDGMENT: 27/10/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No. 5639 of 2003) ARIJIT PASAYAT,J Leave granted.

The Municipal Corporation of Greater Bombay (hereinafter referred to as the 'Corporation') questions legality of the judgment rendered by learned Single Judge of the Bombay High Court in the appellate side. The said appeal related to a judgment and award passed by the Motor Accidents Claims Tribunal for Greater Bombay (for short the 'Tribunal') adjudicating a claim petition under Section 110-A of the Motor Vehicles Act, 1939 (in short the 'Act').

One Kumar (hereinafter referred to as the 'deceased') lost life in a vehicular accident which occurred on 15.8.1989. Vehicle No.MMK 6623, a bus belonging to the Corporation was the offending vehicle. Claim of rupees six lakhs was made by the parents of the deceased (respondents in this appeal). According to the claimants, when the deceased was going by his bicycle suddenly the offending vehicle dashed against him. The impact of the accident was so severe that the deceased was thrown to some distance and sustained various serious injuries which resulted in his death. The deceased was aged about 18 years at the time of accident. He was a good student and would have entered to income earning services shortly. The Corporation took the stand that the deceased had suddenly come from the left side of the bus from Chembur Railway Station at a very high speed and instead of taking left turn, took right turn in contravention of traffic regulations. When the driver of the vehicle saw the cyclist coming on a wrong side, he immediately applied the brakes and halted the bus. Despite this, the cyclist was unable to control the cycle and dashed against the bus from the right corner of the bus, as a result he fell down. He was removed to the hospital with the help of the conductor of the bus and other persons. Witnesses were examined to show as to how the accident occurred and also on the compensation aspect. The Tribunal noticed that as the case progressed, a significant change was made in the stand taken by the Corporation. The driver was examined. He stated that he was driving the vehicle at very slow speed. The deceased came from the side of Chembur Station in the opposite direction and when he saw him at a distance of 30 ft., he immediately applied the brakes, and halted the bus. But the cyclist came and dashed against the front side of the bus. Since the cyclist came from the wrong side of the bus, he sustained injuries which proved fatal. The Tribunal held since the parents were claimants and came from a respectable and educated family, it would not be improbable to conclude that the deceased would have earned decently by taking an employment. By taking the expected earning of Rs.3,000/-p.m. multiplier of 15 was adopted. Accordingly, the quantum was fixed at Rs.5,60,000/- including loss of expectation of life. As a lump sum was being paid, deduction of 25% was made and finally a sum of Rs.4,01,250/- was awarded as compensation, with interest at 15% p.a. from the date of application. The matter was carried in appeal to the Bombay High Court, which by the impugned judgment held that the quantum fixed was proper. However, interest was reduced from 15% to 12% p.a. In support of the appeal, learned Attorney General appearing for the Corporation submitted that the High Court's judgment is vulnerable on more than one counts. Firstly it is submitted that the parents being the claimants, the multiplier as adopted is not proper. Secondly, this was a case where the accident occurred more on account of deceased's negligence than that of the driver of the offending vehicle. This is a clear case of contributory negligence. That being so, the awarded amount cannot be maintained.

In response, learned counsel for the claimants submitted that the award made is just, fair and needs no interference.

A plea which was stressed strenuously related to alleged contributory negligence. Though there is no statutory definition, in common parlance 'negligence' is categorised as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always

mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or lack of it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is a negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn. Para 328). It is now well settled that in the case of contributory negligence, courts have power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage are reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn. P.361).

At this juncture, it is necessary to refer to the 'doctrine of last opportunity'. The said doctrine is said to have emanated from the principle enunciated in Devies v. Mann (1842 (10) M&W 546) which has often been explained as amounting to a rule that when both parties are careless the party which has the last opportunity of avoiding the results of the other's carelessness is alone liable. However, according to Lord Denning it is not a principle of law, but test of causation. (See Davies v. Swan Motor Co. (Swansea) Ltd. (1949 (2) KB 291). Though in some decisions, the doctrine has been applied by courts, after the decisions of the House of Lords in The Volute (1922 (1) AC 129) and Swadling v. Cooper (1931 AC 1), it is no longer to be applied. The sample test is what was the cause

or what were the causes of the damage. The act or omission amounting to want of ordinary care or in defiance of duty or obligation on the part of the complaining party which conjointly with the other party's negligence was the proximate cause of the accident renders it one to be the result of contributory negligence.

Though the driver may not have been in this case wholly responsible for the accident, as contended, from the mere fact that the victim acted in contravention or a traffic regulation alone complete immunity from liability of the driver or the appellant corporation for the accident so as to disown totally responsibility to compensate the injured or dependants of the victim cannot be accorded also. Merely because there may have been breach of any traffic regulation, in the absence of concrete, clinching, positive and legally acceptable material to fix sole responsibility for the accident only on such injured/victim, which are conspicuously absent on the facts and circumstances of this case, the liability of the appellant-corporation remains, though to what extent remains to be considered further. Even according to the stand of the Corporation, the victim was seen by the driver from a distance of about 30ft and the vehicle was moving at a snail's pace. If that be so, it is not understood as to how it became totally impossible for the driver to avoid the accident has not been substantiated by proper evidence. In fact the High Court has noticed that there was ample scope for avoiding the collision between the cycle and the bus. The evidence on record also establishes that the bicycle was thrown to a distance of 4-5 ft. Before taking the turn, horn was found not blown by the driver. The application of the brakes and the incident of collision between the cycle and the bus seem to have been almost simultaneous. The stand of the Corporation that the bus had come to a halt much prior to the incident of the collision is not acceptable and though has been rightly rejected by the Tribunal and the High Court, the infirmity in their orders also lay in rejecting the plea of contributory negligence completely. The Tribunal as well as the High Court ought to have appropriately apportioned the negligence keeping in view the materials placed on records and properly balancing rights of parties.

So far as the quantum of compensation is concerned we find that at the time of accident, as revealed from the claim petition, the claimants were 47 years and 43 years respectively. It is not the age of the deceased alone but the age of the claimants as well which are to be the relevant factors, in case parents or other dependants are claimants.

In Lata Wadhwa and Ors. v. State of Bihar and Ors. (AIR 2001 SC 3218) and M.S. Grewal and Anr. v. Deep Chand Sood and Ors. (AIR 2001 SC 3660) law on the principles of assessment of compensation was elaborated. In Lata Wadhwa's case (supra) this Court while dealing with the issue in relation to the compensation to be paid in relation to the death of children, placing reliance upon the decision of Lord Atkinson in Taff Vale Railway Company v. Jenkins (1913 AC 1) has ruled that "In cases of death of an infant, there may have been no actual pecuniary benefit derived by its parents during the child's lifetime. But this will not necessarily bar the parents claim and prospective loss will found a valid claim provided that the parents establish that they had a reasonable expectation of pecuciary benefit if the child had lived."

This Court in M.S. Grewal's case (supra) has clearly observed that the decision in Lata Wadhwa's case (supra) is definitely a guiding factor in the matter of award of compensation wherein children

die under an unfortunate accident. The said observation was made after taking into consideration the conclusions arrived in Lata Wadhwa's (supra) regarding the compensation which was to be paid and the multiplier which was to be applied in relation to the death of a child. This Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas and Ors. (AIR 1994 SC 1631) held that the proper method of compensation is the multiplier method, and the same view was re-iterated in M.S. Grewal's case (supra) observing that "needless to say that the multiplier method stands accepted by this Court in the said decision".

Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated have relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants it can never exceed 10 even by the most liberal standards. Worked out on that basis amount comes to Rs.3.6 lakhs at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after making an appropriate deduction which can reasonably be fixed at 25%, the compensation amount payable by the Corporation can be fixed at Rupees 3 lakhs including the amount awarded by the Tribunal and confirmed by the High Court for loss of expectation of life. Interest at the rate as awarded by the High Court is maintained from the date of application for compensation.

The appeal is partly allowed to the extent indicated above. There will be no order as to costs.