

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**MAC.APP.No.13/2007**

Date of Decision: 14<sup>th</sup> July, 2009

NATIONAL INSURANCE CO.LTD. .... Appellant

Through : Mr. Amit Kumar Pandey, Adv.

versus

FARZANA ORS. .... Respondents

Through : Mr. Arun Srivastava and  
Ms. Anupama Srivastava, Advs.  
for R – 1 & 2.

**CORAM :-**

**THE HON'BLE MR. JUSTICE J.R. MIDHA**

1. The appellants have challenged the award of the learned Tribunal whereby the compensation of Rs.3,62,500/- has been awarded to the appellants.

2. The accident dated 10<sup>th</sup> May, 2000 resulted in the death of Master Farman aged 7 years. The parents of the deceased filed the claim petition before the learned Tribunal. The deceased was a

student of IInd standard in P.D. Public School. The learned

Tribunal took the notional income of the deceased to be Rs.22,500/- and applied the multiplier of 15 to compute the loss of dependency to be Rs.3,37,500/-. Rs.10,000/- has been awarded towards medical expenses and Rs.5,000/- each has been awarded towards transportation of the dead body, funeral expenses and loss of estate. The total compensation is awarded Rs.3,62,500/-.

3. The learned counsel for the appellant submits that the learned Tribunal has not made 1/3<sup>rd</sup> deduction towards the personal expenses of the deceased while computing the compensation. The second ground submitted by learned counsel for the appellant is that the Second Schedule of the Motor Vehicles Act provides for notional income of Rs.15,000/- whereas the learned Tribunal has taken the notional income to be Rs.22,500/- in the absence of any evidence.

4. In the case of *Manju Devi Vs. Musafir Paswan, VII (2005) SLT 257*, the Hon'ble Supreme Court awarded compensation of Rs.2,25,000/- in respect of death of a 13-years old boy by applying

the multiplier of 15 and taking the notional income of Rs.15,000/- as per the Second Schedule of the Motor Vehicles Act. The relevant portion of the said judgment is reproduced hereunder:-

“As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs.15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-”

5. The case of **Sobhagya Devi & Ors. Vs. Sukhvir Singh & Ors., II (2006) ACC 1997** relates to the death of a 12-year old boy. Following the decision of the Apex Court in **Manju Devi's case (supra)**, the Rajasthan High Court awarded Rs.2,25,000/- by applying the Second Schedule of the Motor Vehicles Act.

6. The case of **Syam Narayan Vs. Kitty Tours & Travels, 2006 ACJ 320** relates to the death of a child aged 5 years. This Court relying on the judgment of the Apex Court in **Manju Devi's case (supra)** awarded compensation to the parents by applying the notional income of Rs.15,000/- and multiplier of 15 as per the

Second Schedule and further awarded Rs.50,000/- for loss of company of the child as also pain and suffering by them. The relevant portion of the said judgment is reproduced hereunder:-

"3. By and under the award dated 5.12.2003, a sum of Rs.1,00,000/- has been awarded to the appellants. While awarding sum of Rs.1,00,000/- to appellants, learned M.A.C.T. has held that the income of the deceased child was incapable of assessment or estimation. Recognising that every parent has a reasonable expectation of financial and moral support from his child, in the absence of any evidence led, learned M.A.C.T. opined that the interest of justice requires that appellants are compensated with the sum of Rs.1,00,000/-

4. Had the Tribunal peeped into the Second Schedule, as per section 163-A of Motor Vehicles Act, 1988, it would have dawned on the Tribunal that vide serial No.6, notional income for compensation in case of fatal accidents has been stipulated at Rs.15,000/- per annum.

5. In the decision reported as Manju Devi V. Musafir Paswan, 2005 ACJ 99 (SC), dealing with the accidental death of 13 years old boy, while awarding compensation under the Motor Vehicles Act, 1988, Apex Court took into account the notional income stipulated in the

Second Schedule being Rs.15,000/- per annum.

6. In the instant case, baby Chanda was aged 5 years. Age of the appellants as on date of accident was 28 years and 26 years respectively as recorded in the impugned award. Applying a multiplier of 15 as set out in Second Schedule which refers to the said multiplier, where age of the victim is upto 15 years, compensation determinable comes to Rs.15,000 x 15 = Rs.2,25,000/-.

7. The learned Tribunal has awarded Rs.1,00,000/- towards loss of expectation of financial and moral support as also loss of company of the child, mental agony, etc. I have found that the parents are entitled to compensation in the sum of Rs.2,25,000/- on account of loss of financial support from the deceased child. I award a sum of Rs.50,000/- on account of loss of company of the child as also pain and suffering suffered by them as a result of the untimely death of baby Chanda. Appeal accordingly stands disposed of enhancing the compensation to Rs.2,75,000/-.

7. In the case of **R.K. Malik vs. Kiran Pal, III (2006) ACC 261**, 22 children died in an accident of a school bus which fell in river Yamuna. This Court held the Second Schedule of the Motor Vehicles Act to be the appropriate method for computing the compensation. With respect to the non-pecuniary damages, the

Court observed that loss of dependency of life and pain and suffering on that account, generally speaking is same and uniform to all regardless of status unless there is a specific case made out for deviation. This Court awarded Rs.75,000/- towards non-pecuniary compensation.

8. The aforesaid judgment of this Court was challenged before the Hon'ble Supreme Court and which has been decided recently on 15<sup>th</sup> May, 2009 and is reported as **R.K. Malik vs. Kiran Pal, 2009(8) Scale 451**. The Hon'ble Supreme Court held that the claimants are also entitled to compensation towards future prospects. The Hon'ble Supreme Court held that the claimants are entitled to compensate towards future prospects and granted further compensation of Rs.75,000/- towards future prospects of the children. The findings of the Hon'ble Supreme Court are as under:-

19. The other issue is with regard to non-pecuniary compensation to the appellants-dependents on the loss of human life, loss of company, companionship,

happiness, pain and suffering, loss of expectation of life etc.

20. In the Halsbury's Laws of England, 4th Edition, Vol. 12, page 446, it has been stated with regard to non-pecuniary loss as follows:

“Non-pecuniary loss: the pattern. Damages awarded for pain and suffering and loss of amenity constitute a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the Courts in the light of previous decisions. Thus there has been evolved a set of conventional principles providing a provisional guide to the comparative severity of different injuries, and indicating a bracket of damages into which a particular injury will currently fall. The particular circumstance of the plaintiff, including his age and any unusual deprivation he may suffer, is reflected in the actual amount of the award. The fall in the value of money leads to a continuing reassessment of these awards and to periodic reassessments of damages at certain key points in the pattern where the disability is readily identifiable and not subject to large variations in individual cases.

21. In the case of Ward v. James (1965) 1 All E R 563, it was observed:

“Although you cannot give a man so gravely injured much for his ‘lost years’, you can, however, compensate him for his loss during his shortened, span, that is, during his expected ‘years of survival’. You can compensate him for

his loss of earnings during that time, and for the cost of treatment, nursing and attendance. But how can you compensate him for being rendered a helpless invalid? He may, owing to brain injury, be rendered unconscious for the rest of his days, or, owing to a back injury, be unable to rise from his bed. He has lost everything that makes life worthwhile. Money is no good to him. Yet Judges and juries have to do the best they can and give him what they think is fair. No wonder they find it well nigh insoluble. They are being asked to calculate. The figure is bound to be for the most part a conventional sum. The Judges have worked out a pattern, and they keep it in line with the changes in the value of money.

22. The Supreme Court in the case of R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551, at page 556, has observed as follows in para 9:

"9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far

non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.”

In this case, the Court awarded non-pecuniary special damages of Rs. 3, 00,000/- to the claimants.

23. In *Common Cause, A Registered Society v. Union of India* (1999) 6 SCC 667 @ page 738, it was observed:

“128. The object of an award of damages is to give the plaintiff compensation for damage, loss or injury he has suffered. The elements of damage recognised by law are divisible into two main groups: pecuniary and non-pecuniary. While the pecuniary loss is capable of being arithmetically worked out, the non-pecuniary loss is not so calculable. Non-pecuniary loss is compensated in terms of money, not as a substitute or replacement for other money, but as a substitute, what McGregor says, is generally more important than money: it is the best that a court can do. In *Mediana*, Re Lord

Halsbury, L.C. observed as under: "How is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by arithmetical calculation establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident.... But nevertheless the law recognises that as a topic upon which damages may be given."

24. It is extremely difficult to quantify the non pecuniary compensation as it is to a great extent based upon the sentiments and emotions. But, the same could not be a ground for non-payment of any amount whatsoever by stating that it is difficult to quantify and pinpoint the exact amount payable with mathematical accuracy. Human life cannot be measured only in terms of loss of earning or monetary losses alone. There are emotional attachments involved and loss of a child can have a devastating effect on the family which can be easily visualized and understood. Perhaps, the only mechanism known to law in this kind of situation is to compensate a person who has suffered non-pecuniary loss or damage as a consequence of the wrong done to him by way of damages/monetary compensation. Undoubtedly, when a victim of a wrong suffers injuries he is entitled to compensation including compensation for the prospective life, pain and suffering, happiness etc., which is sometimes described as compensation paid for "loss of expectation of life". This head of compensation need not be restricted to a case where the injured person

himself initiates action but is equally admissible if his dependant brings about the action.

25. That being the position, the crucial problem arises with regard to the quantification of such compensation. The injury inflicted by deprivation of the life of a child is extremely difficult to quantify. In view of the uncertainties and contingencies of human life, what would be an appropriate figure, an adequate solatium is difficult to specify. The courts have therefore used the expression "standard compensation" and "conventional amount/sum" to get over the difficulty that arises in quantifying a figure as the same ensures consistency and uniformity in awarding compensations.

26. While quantifying and arriving at a figure for "loss of expectation of life", the Court have to keep in mind that this figure is not to be calculated for the prospective loss or further pecuniary benefits that has been awarded under another head i.e. pecuniary loss. The compensation payable under this head is for loss of life and not loss of future pecuniary prospects. Under this head, compensation is paid for termination of life, which results in constant pain and suffering. This pain and suffering does not depend upon the financial position of the victim or the claimant but rather on the capacity and the ability of the deceased to provide happiness to the claimant. This compensation is paid for loss of prospective happiness which the claimant/victim would have enjoyed had the child not been died at the tender age.

27. In the case of Lata Wadhwa (supra), wherein several persons including children lost their lives in a fire accident, the Court awarded substantial amount as compensation. No doubt, the Court noticed that the children who lost their lives were studying in an expensive school, had bright prospects and belonged to upper middle class, yet it cannot be said that higher compensation awarded was for deprivation of life and the pain and suffering undergone on loss of life due to financial status. The term "conventional compensation" used in the said case has been used for non pecuniary compensation payable on account of pain and suffering as a result of death. The Court in the said case referred to Rs. 50, 000/- as conventional figure. The reason was loss of expectancy of life and pain and suffering on that account which was common and uniform to all regardless of the status. Unless there is a specific case departing from the conventional formula, non-pecuniary compensation should not be fixed on basis of economic wealth and background.

28. In Lata Wadhawa case (supra), wherein the accident took place on 03.03.1989, the multiplier method was referred to and adopted with approval. In cases of children between 5 to 10 years of age, compensation of Rs. 1.50 lakhs was awarded towards pecuniary compensation and in addition a sum of Rs. 50,000/- was awarded towards "conventional compensation". In the case of children between 10 to 18 years compensation of Rs. 4.10 lakhs was awarded including "conventional compensation". While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs. 24,000/-

per annum instead of Rs. 12, 000/- per annum as recommended by Justice Y. V.Chandrachud Committee. This was in view of the fact that the company in question had an un-written rule that every employee can get one of his children employed in the said company.

29. In the case of M.S. Grewal v. Deep Chand Sood MANU/SC/0506/2001, wherein 14 students of a public school got drowned in a river due to negligence of the teachers. On the question of quantum of compensation, this Court accepted that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency. It was emphasized that the Court must ensure that a just compensation was awarded.

30. In Grewal case (supra), compensation of Rs. 5 lakhs was awarded to the claimants and the same was held to be justified. Learned Counsel for the respondent No. 3, however, pointed out that in the said case the Supreme Court had noticed that the students belonged to an affluent school as was apparent from the fee structure and therefore the compensation of Rs. 5 lakhs as awarded by the High Court was not found to be excessive. It is no doubt true that the Supreme Court in the said case noticed that the students belonged to an upper middle class background but the basis and the principle on which the compensation was awarded in that case would equally apply to the present case.

31. A forceful submission has been made by the learned Counsels appearing for the claimants-appellants 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. 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. Reliance in this regard may be placed on the decisions rendered by this Court in *General Manager, Kerala S. R. T. C. v. Susamma Thomas* (1994) 2 SCC 176; *Sarla Dixit v. Balwant Yadav* (1996) 3 SCC 179; and *Lata Wadhwa* case (supra).

32. In view of discussion made hereinbefore, it is quite clear the claim with regard to future prospect should have been be addressed by the courts below. While considering such claims, child's performance in school, the reputation of the school etc. might be taken into consideration. In the present case, records shows that the children were good in studies and studying in a reasonably good school. Naturally, their future prospect would be presumed to be good and bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future. In the case of *Lata Wadhwa* (supra) and *M. S. Grewal* (supra), the Supreme Court recognised

such future prospect as basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, facts and circumstances of the present case, and following the decision in *Lata Wadhwa (supra)* and *M. S. Grewal (supra)*, we deem it appropriate to grant compensation of Rs. 75,000/- (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs. 75,000/- is over and above what has been awarded by the High Court.

33. Besides, the Courts have been awarding compensation for pain and suffering and towards non-pecuniary damages. Reference in this regard can be made to *R. D. Hattangadi case (supra)*. Further, the said compensation must be just and reasonable. This Court has observed as follows in *State of Haryana v. Jasbir Kaur (2003) 7 SCC 484*:

"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."

34. So far as the pecuniary damage is concerned we are of the considered view both the Tribunal as well as the High Court has awarded the compensation on the basis of Second Schedule and relevant multiplier under the Act. However, we may notice here that as far as non-pecuniary damages are concerned, the Tribunal does not award any compensation under the

head of non-pecuniary damages. However, in appeal the High Court has elaborately discussed this aspect of the matter and has awarded non-pecuniary damages of Rs. 75,000. Needless to say, pecuniary damages seeks to compensate those losses which can be translated into money terms like loss of earnings, actual and prospective earning and other out of pocket expenses. In contrast, non-pecuniary damages include such immeasurable elements as pain and suffering and loss of amenity and enjoyment of life. In this context, it becomes duty of the court to award just compensation for non-pecuniary loss. As already noted it is difficult to quantify the non-pecuniary compensation, nevertheless, the endeavour of the Court must be to provide a just, fair and reasonable amount as compensation keeping in view all relevant facts and circumstances into consideration. We have noticed that the High Court in present case has enhanced the compensation in this category by Rs. 75, 000/- in all connected appeals. We do not find any infirmity in that regard.”

9. The learned Tribunal was in error in taking the notional income to be Rs.22,500/- per annum. Following the aforesaid judgments, the notional income of the deceased is taken to be Rs.15,000/- per annum and applying the multiplier of 15, the claimants are entitled to loss of dependency of Rs.2,25,000/-. The claimants are also entitled to compensation of Rs.75,000/- towards

the future prospects in terms of the judgment of the Hon'ble Supreme Court in **R.K. Malik Vs. Kiran Pal, 2009 (8) Scale 451**. The claimants are also entitled to a further sum of Rs.75,000/- towards non-pecuniary damages in terms of the judgment of this Court in the case of **R.K. Malik Vs. Kiran Pal, III (2006) ACC 261** upheld by the Hon'ble Supreme Court. The claimants are entitled to total compensation of Rs.3,75,000/- (Rs.2,25,000/- + Rs.75,000/- + Rs.75,000/-).

10. The learned Tribunal has awarded a sum of Rs.3,62,500/- to the claimants. The claimants have not filed any counter claim and, therefore, the amount awarded by the learned Tribunal cannot be enhanced.

11. The award of the learned Tribunal is upheld for the reasons stated above.

12. The appeal is dismissed. No costs.

13. The ex-parte stay order dated 9<sup>th</sup> January, 2007 is vacated.

The appellant has deposited 2/3<sup>rd</sup> of the award amount in terms of

the order dated 9<sup>th</sup> January, 2007 which has been released to the claimants. The appellant is directed to deposit the remaining award amount along with up to date interest with the learned Tribunal within 30 days. Upon the said deposit being made, the learned Tribunal is directed to disburse the same to the claimants in terms of its award.

**J.R. MIDHA, J**

**JULY 14, 2009**