THE HIGH COURT OF MADHYA PRADESH
MA No.267/2017
Smt. Meera and others Vs. Har Prasad and others
MA No.296/2017
Reliance General Insurance Company Limited Vs. Smt. Meera and others

Gwalior, Dated :13/01/2020

Shri B.D. Verma, Advocate for appellants in MA No.267/2017 and for respondents no.1 to 3 in MA No.296/2017.

Shri N.S. Tomar, Advocate for appellant in MA No.296/2017 and for respondent no.3 in MA No.267/2017.

By this common order MA No.267/2017, which has been filed by the claimants, and M.A. No.296/2017, which has been filed by the Insurance Company, shall be decided.

2. Both the Miscellaneous Appeals have been filed against the award dated 22/11/2016 passed by Fifth Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.191/2014. MA No.267/2017 has been filed by the claimants for enhancement of compensation amount, whereas MA No.296/2017 has been filed by the Insurance Company challenging the award passed by the Claims Tribunal. The claimants have valued the appeal at Rs.2,00,000/-.

3. The necessary facts for disposal of the present appeals in short are that on 19/5/2008 the deceased Jaipratap alias Akash was traveling in a Maruti car bearing registration No. MP 07 CA 2351 along-with other persons. The said car was being driven by Bijendra Singh. When the car reached near Dholagarh Gate, AB Road, at that

time the, driver of the offending Truck namely Harprasad by driving the truck No. HR 38 A 2837, which was owned by respondent no.2, in a rash and negligent manner dashed the car, as result of which, the deceased Jaipratap alias Akash suffered serious injuries and expired on the spot. It is undisputed fact that the deceased Jaipratap alias Akash was aged about 9 years and was the student of K.G. Children School. Accordingly, the appellants/claimants filed a claim petition under Section 166 of the Motor Vehicles Act for grant of compensation amount of Rs.10,00,000/-.

4. The Claims Tribunal by the impugned award dated 22/11/2016 came to a conclusion that the respondent no.1, namely, Harprasad was driving the offending truck No. HR 38 H 2837 in a rash and negligent manner and was responsible for causing the accident. Further, the age of the deceased Jaipratap alias Akash was assessed as 9 years and accordingly, held that her notional income would be Rs.15,000/- per year and after deducting 1/3rd towards the personal expenses, assessed that the annual loss of dependency would be Rs.10,000/- and applied the multiplier of 15 and further awarded Rs.25,000/- towards loss of estate and Rs.25,000/- towards funeral expenses.

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5. Challenging the impugned award passed by the Claims Tribunal, it is submitted by the counsel for the Insurance Company that although the driver of the offending vehicle had expired during the pendency of the claim petition, however, his legal representatives were not brought on record and the name of Harprasad was deleted and as the owner of the offending vehicle is vicariously liable for the act of his employee and since the claim petition had abated against the driver, therefore, the Insurance Company is not liable to indemnify the owner. Further, by order dated 8/11/2016 the application filed by the Insurance Company for summoning the owner with driving license was wrongly rejected and the owner of the offending truck did not appear before the Court and under Section 134 of the Act it is mandatory on the part of the owner of the offending vehicle to cooperate with the Insurance Company and by order dated 16/11/2016 the Claims Tribunal had wrongly closed the rights of the Insurance Company to lead evidence.

6. In reply, it is submitted by the counsel for the claimants that in fact the driving license of the driver of the offending vehicle was seized by the police. Furthermore, it was for the Insurance Company

to prove that the driver of the offending truck was not having any driving license and since the Insurance Company has failed to prove the same, therefore, the Insurance Company cannot be exonerated. It is further submitted that several other claim petitions were also filed, i.e. Claim Case No.38/2009 and 39/2009 before the Court of 6th Additional Motor Accident Claims Tribunal and in those claim petitions, it was held that the Insurance Company has failed to prove that the driver of the offending truck was driving the vehicle without having any valid driving license. It is submitted that once in the other claim petitions filed before another Motor Accident Claims Tribunal, it has already held that the Insurance Company has failed to prove that the driver of the offending truck was not having a valid license, therefore, the principle of *res judicata* would apply and the findings given by the 6th Additional Motor Accident Claims Tribunal, Gwalior in claim case Nos.38/2009 and 39/2009 by award dated 5/1/2010 would be binding.

7. Heard the learned counsel for the parties.

8. The certified copy of the award dated 05.01.2010 passed by 6th Additional Motor Accident Claims Tribunal in Claim Case No. 38/2009 and 39/2009 have been marked as Annexure P-9. The

Insurance Company has not disputed the said fact. It is not the case of the Insurance Company that the award dated 05.01.2010 passed by 6th Additional Motor Accident Claims Tribunal in Claim Case No. 38/2009 and 39/2009 has been set aside or reversed.

9. Accordingly, this Court is of the considered opinion that once in a claim petition filed by other claimant arising out of the same accident, it has been held that Insurance Company is liable to indemnify the owner and is jointly and severally liable to pay compensation, then the said finding would be binding and only if any new evidence is led by the parties, only then it would be possible for the Claims Tribunal to give a finding at variance with the findings recorded in earlier claim petition arising out of same accident. The Supreme Court in the case of **New India Assurance Company Limited Vs. Yadu Sambhaji and others** reported in **(2011) 2 SCC 416** has held as under:-

> "**20.** In a given case, on the basis of the evidences later on adduced before it in the main proceeding under Section 110-A of the Act, it may be possible for the Claims Tribunal to arrive at a finding at variance with the finding recorded by a superior court on the same issue on an application under Section 92-A of the Act. But the variant finding by the Tribunal must be based on some material facts coming to light from the evidences

> led before it that were not available before the superior court while dealing with the proceeding under Section 92-A of the Act. In this case, however, as correctly noted by the High Court, the position is entirely different. It is true that *Shivaji Dayanu Patil case* arose from the claim for no-fault compensation under Section 92-A but all the material facts were already before the Court and all the contentions being raised now were considered at length by this Court in that case."

10. Thus, if the facts of the present case are considered in the light of the judgment passed in the case of **Yadu Sambhaji (Supra),** then it is clear that although the Insurance Company could have led fresh evidence to prove that the driver of the offending truck was not having valid driving license, but no such efforts were made. The appellant/Insurance Company had filed an application under Section 169 of the Motor Vehicles Act seeking a direction to the owner of the vehicle to produce the license, but the said application was rejected by the trial court by order dated 8/11/2016 on the ground of *res judicata.*

11. Although the trial court rejected the application on the ground of *res judicata,* but if the reply to the application under Section 169 of the Motor Vehicles Act is considered, then it is clear that the claimants had filed a photocopy of the seizure memo prepared by the

police, by which certain documents were seized from the driver of the offending truck. As per the said seizure memo, the driving license of the truck driver was also seized. Thus, the Insurance Company was well aware of the fact that the driving license of the truck driver has been seized by the police and, therefore, could have obtained the verification report from the concerning RTO, however, no steps were taken by the Insurance Company and it was simply weeding the bushes by filing an application under Section 169 of the Motor Vehicles Act seeking a direction to the owner of the offending truck to produce the license. As the Insurance Company was aware of the details of the driving license of the driver of the truck, therefore, this Court is of the considered opinion that the Insurance Company did not take any pains to lead any fresh evidence to prove that the driver of the offending truck was not having any valid driving license at the time of the accident. Accordingly, it is held that the Claims Tribunal did not commit any mistake in holding that the Insurance Company is jointly and severally liable to make payment of compensation to the claimants/respondents no.1 to 3.

12. So far as the question of non-bringing of the legal representatives of the driver of the offending truck namely Harprasad

is concerned, in the considered opinion of this Court, there will not be any adverse effect of non-bringing the legal representatives of the deceased driver. The owner of the offending vehicle is made vicariously liable for the act of his employee, i.e., driver, therefore, once it is held that the driver of the offending vehicle was rash and negligent and was responsible for the accident, then the owner of the vehicle would automatically become liable to pay compensation for the rash and negligent act of his driver, therefore, for the purpose of payment of compensation, the owner of the offending vehicle can be kept in the category of legal representative of the driver. Since the owner of the vehicle is still alive and in view of the Insurance Policy, the Insurance Company is liable to indemnify the owner, therefore, it is held that merely because the legal representatives of the deceased driver of the offending vehicle were not brought on record would not result in abatement of the claim petition in *toto*. At the most, it can be said that by not bringing the legal representatives of the deceased driver on record, the claim petition against the driver of the offending vehicle had stood abated. Furthermore, on 25.10.2016 an application was filed for deleting the name of Harprasad. No objection was raised by the Insurance Company to the effect that deletion of the

name of respondent No. 1 Harprasad would result in abatement of the entire claim petition.

13. So far as the closure of the right of the Insurance Company to lead evidence is concerned, it is clear that on 27.10.2016 the claimants had closed their evidence and accordingly, it was directed that the Insurance Company must examine their all witnesses on the next date and if they so desire then they can collect Humdast notice or can pay process fee. Thereafter on 02.11.2016 the case was adjourned for examining the witnesses. Thereafter on 04.11.2016 the Insurance Company did not examine any witness and filed an application under Section 169 of Motor Vehicles Act. Thereafter, the said application under Section 169 of the Motor Vehicles Act was dismissed by order dated 08.11.2016 and since no witness was produced, therefore, the right of the Insurance Company to lead evidence was closed. From the order-sheets of the Claims Tribunal, it is clear that the case was fixed for 02.11.2016 for the first time for examination of the witnesses of the Insurance Company and on 08.11.2016 its right was closed.

14. The only question which requires consideration is that "whether any prejudice has been caused to the Insurance Company or

not?"

15. This Court has already held that the Insurance Company is liable to make payment of compensation. So far as the income of the deceased is concerned, undisputedly the deceased is minor child aged about 9 years having no income, therefore, there is no question of any dispute with regard to the income of the deceased.

16. Thus this Court is of the considered opinion, that merely because the Claims Tribunal did not grant further time to lead evidence has not caused any real prejudice to the Insurance Company, therefore, no useful purpose would be served by remanding the matter back to the Claims Tribunal.

17. So far as the question of non-cooperation by the owner of the offending truck is concerned, it is suffice to mention that the same is a interse disputed between the Insurance Company and the insured. The claimants cannot be made to suffer. Accordingly, it is held that the Insurance Company is jointly and severally liable to make payment of compensation amount.

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18. Challenging the award passed by the Claims Tribunal, it is submitted by the counsel for the appellants/claimants that nothing has

been awarded towards the loss of love and affection and the Claims Tribunal should not have deducted 1/3rd of the notional income towards the personal expenses. Considered the submissions made by the Counsel for the parties.

19. The Supreme Court in the case of **R.K. Malik and Another Vs. Kiran Pal and others** reported in **(2009) 14 SCC 1** has held as under:-

> "**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. Reliance in this regard may be placed on the decisions rendered by this Court in *Kerala SRTC* v. *Susamma Thomas*, *Sarla Dixit* v. *Balwant Yadav* and *Lata Wadhwa case*.
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> **36.** In *Lata Wadhwa* and *M.S. Grewal* the Supreme Court recognised such future prospects as the basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, the facts and circumstances of the present case, and following the decision in *Lata Wadhwa* and *M.S. Grewal*, 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.

37. 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*. Further, the said compensation must be just and reasonable.

38. This Court has observed as follows in *State of Haryana* v. *Jasbir Kaur*, SCC at p. 7, para 487:

> "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."

39. 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 the 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.

40. Needless to say, pecuniary damages seek 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 the 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."

20. Thus, this Court is of the considered opinion that the Claims Tribunal has rightly deducted 1/3rd of the notional income towards the personal expenses of the deceased, however, considering the fact that the deceased was aged about 9 years, this Court is of the considered opinion that the additional amount of Rs.1,00,000/- can be awarded to the claimants under the head of non-pecuniary damages.

21. It is further submitted that no compensation has been awarded under the head of love and affection. The claimant no.1 has lost her 9 years old child. Therefore, this Court is of the considered opinion, that the claimants are also entitled for an amount of Rs.40,000/- under the head of loss of love and affection.

22. Thus, it is held that in addition to the compensation amount as awarded by the Motor Accident Claims Tribunal, the claimants shall also be entitled for further amount of Rs.1,40,000/-. The other conditions of the award shall remain the same.

23. With aforesaid modification, the award 22/11/2016 passed by Fifth Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.191/2014 is hereby affirmed. Accordingly, MA No.267/2017 is **allowed** with aforesaid modification and MA No.296/2017 filed by the Insurance Company is **dismissed in *toto.***

(G.S. Ahluwalia)
Judge

Arun*