Supreme Court of India
R.K. Malik & Anr vs Kiran Pal & Ors on 15 May, 2009
Author: . M Sharma
Bench: S.B. Sinha, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3608 OF 2009
(Arising out of SLP(C) No. 17525 of 2006)

R. K. Malik & Anr. .....Appellants

Versus

Kiran Pal & Ors. .....Respondents

With

CIVIL APPEAL No. 3609 OF 2009
(Arising out of SLP(C) No. 1686 of 2007)

And

CIVIL APPEAL No. 3607 OF 2009
(Arising out of SLP(C) No. 13397 of 2007)

JUDGMENT

Dr. Mukundakam Sharma, J.

1. Leave granted.

2. Challenge in these appeals is made to the legality and validity of the judgment and order dated 17.05.2006 rendered by a Single Judge of Delhi High Court in a bunch of motor accident claims petitions bearing MACT Nos. 194, 195, 196, 197, 199, 200, 201- 202, 203-204, 207-208, 209-210, 213, 214, 215, 217, 221, 222, 228-229, 231-232, 233-234 and 742-743 of 2005, whereby and whereunder the High Court was pleased to dispose of the claim petitions of the appellants herein.

3. In order to decide these appeals, it would be necessary to state few basic facts. The appellants herein are claimants whose children were studying in school. On 18.11.1997 when these children were proceeding to the school in a bus bearing No. DL IP-1644, the bus after overrunning the road

and breaking the railing got drowned in Yamuna river at Wazirabad Yamuna Bridge. Consequent to the accident, 29 children died.

4. The bus was being driven by Mr. Karan Pal (respondent No.1 herein) and was owned by Mr. Hari Kishan (respondent No.2) and was insured with National Insurance Company Ltd. (respondent No.

3). It was alleged that the driver was driving the bus in a rash and negligent manner and at a very fast speed. It was further alleged that the bus driver lost control of the bus and after breaking the railing of the bridge on left side, the same fell into the river Yamuna.

5. The appellants filed claim petitions individually on account of fault liability and sought for payment of compensation under Section 163-A read with Second Schedule of the Motor Vehicle Act, 1988 (in short `the Act'). It was pleaded that the deceased-children would have earned good amount per month in future and would have provided financial assistance and pecuniary help to their parents- appellants. The claim petitions of the appellants were heard together by the Motor Accident Claims Tribunal, Delhi (in short `the Tribunal').

6. During the course of trial before the Tribunal, several witnesses were examined in support of the respective claims. The appellants also examined themselves as witnesses. The Tribunal by award dated 06.12.2004 held that the accident had taken place due to the negligence of the driver (respondent No. 1) and, therefore, the said respondent along with respondent Nos. 2 and 3 were jointly and severally liable to pay compensation. The Tribunal by its common award awarded a sum of Rs. 1, 55,000/- to the dependents of children between age group of 10 to 15 years and Rs. 1, 65,000/- between 15 to 18 years. Three of the children namely Kailash Rathi, Neena Jain and Jatish Sharma were less than 10 years. In the case of Kailash Rathi, compensation of Rs. 1, 05,000/- was awarded and in the cases of Neena Jain and Jatish Sharma, compensation of Rs. 1, 30,000/- and Rs. 1, 31,000/- respectively was awarded. Additional Rs. 1000/- was awarded in the case of Jatish Sharma, as in some other cases, for loss of books. The figures mentioned above include Rs. 5,000/- each towards funeral and last rites. It awarded interest @ 6% for four years. As per the Second Schedule of the Act, the balance amount was awarded for loss of dependency that was calculated on notional income of Rs. 15,000/- per annum. Rs. 5,000/- was deducted towards personal living expenses. The Tribunal applied multiplier of 15 for children below 15 years and multiplier of 16 for children between 16 and 18 years respectively.

7. Against the said order of the Tribunal, appeals were filed before the High Court by the appellants who were heard together by the High Court. It was submitted before the High Court that the amount awarded by the Tribunal was not just and reasonable and the Tribunal erred in not awarding interest from the date of petition till realization.

8. The High Court by its common order held that the appellants are entitled to enhancement of compensation in all the cases by Rs. 75,000/- and Rs. 1000/- (if not already awarded by the Tribunal) and interest @ 7.5% per annum from the date of filling of the claim petition till payment. It was further held that 50% of the enhanced compensation with interest shall be paid and the balance 50% shall be kept in the form of fixed deposit or in the post office for a period of six years.

The High Court directed that the dependents would be entitled to interest but would not withdraw the principal amount during the lock-in period of six years without the permission of the Tribunal.

9. Feeling aggrieved, the appellants have preferred the present special leave petition contending that the High Court ought to have applied the ratio of Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197 to the facts of the case and also that it failed to award a fair and reasonable compensation. It was submitted that the High Court ought to have awarded compensation of Rs. 10, 00,000/-. It was the further contention that the High Court erred in applying notional income of deceased child as Rs. 15,000/- per annum only. It was further contended that the Tribunal ought to have enhanced the income considering the rise in cost of living as well as inflation.

10.Undoubtedly, the compensation in law is paid to restore the person, who has suffered damage or loss in the same position, if the tortuous act or the breach of contract had not been committed. The law requires that the party suffering should be put in the same position, if the contract had been performed or the wrong had not been committed. The law in all such matters requires payment of adequate, reasonable and just monetary compensation.

11.In cases of motor accidents the endeavour is to put the dependents/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act.

12.However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely. To put it simply-pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life etc. The Act provides for payment of "just compensation" vide section 166 and 168. It is left to the courts to decide what would be "just compensation" in facts of a case.

13.For calculating pecuniary loss or loss of dependency, this Court has repeatedly held that it is the multiplier method which should be applied. The said method is based upon the principle that the claimant must be paid a capital sum, which would yield sufficient interest to provide material benefits of the same standard and duration as the deceased would have provided for the dependents, if the deceased had lived and earned. The multiplier method is based upon the assessment that yearly loss of dependency should be equal to interest that could be earned in normal course on the capital sum invested. The capital sum would be the compensation for loss of dependency or the pecuniary loss suffered by the dependents. Needless to say, uniform application of the multiplier method ensures consistency and certainty and prevents different amounts being awarded in different cases.

14. For calculating the yearly loss of dependency the starting point is the wages being earned by the deceased, less his personal and living expenses. This provides a basic figure. Thereafter, effect is given to the future prospects of the deceased, inflation and general price rise that erodes value and the purchasing power of money. To the multiplicand so calculated, multiplier is to be applied. The multiplier is decided and determined on the basis of length of dependency, which must be estimated. This has to be necessarily discounted for contingencies and uncertainties. Reference in this regard may be made to the judgments of this Court in the case of Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179; Managing Director TNSTC Ltd. v. K. T. Bindu, (2005) 8 SCC 473; T. N. State Transport Corp. Ltd. v. S. Rajapriya, (2005) 6 SCC 236; New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 and United India Insurance Co. Ltd. v. Patrica Jean Mahajan (2002) 6 SCC 281.

15. The real problem that arises in the cases of death of children is that they are not earning at the time of the accident. In most of the cases they were still studying and not working. However, under no stretch of imagination it can be said that the parents, who are appellants herein, have not suffered any pecuniary loss. In fact, Loss of dependency by its very nature is awarded for prospective or future loss. In this context, Lord Atkinson aptly observed in Taff Vale Rly. Co. v. Jenkins, (1911-13) All England Reporter 160 as follows:

"In case of the 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 pecuniary benefit if the child had lived."

16. Then, how does one calculate pecuniary compensation for loss of future earnings and loss of dependency of the parents, grand parents etc. in the case of non-working student? Under the Second Schedule of the Act in case of a non earning person, his income is notionally estimated at Rs. 15,000/- per annum. The Second Schedule is applicable to claim petitions filed under Section 163 A of the Act. The Second Schedule provides for the multiplier to be applied in cases where the age of the victim was less than 15 years and between 15 years but not exceeding 20 years. Even when compensation is payable under Section 166 read with 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible, except in exceptional cases. [see Abati Bezbaruah v. Dy. Director General, Geological Survey of India, (2003) 3 SCC 148); United India Insurance Company Ltd. v. Patricia Jean Mahajan, (2002) 6 SCC 281 and UP State Road Transport Corp. v. Trilok Chandra, (1996) 4 SCC 362].

17. Reverting back to the factual position of the present case, the date of accident is 18.11.1997. Prior to this, the Second Schedule of the Act was already introduced w. e. f. 14.11.1994. Thus, the notional income mentioned in the Second Schedule and the multiplier specified therein can form the basis for the pecuniary compensation for the loss of dependency in the present cases. No fact and reason was highlighted during the arguments why the Second Schedule should not apply in the present cases. The Second Schedule also provides for deduction of 1/3rd consideration towards expenses; which the victim would have incurred on himself if he had lived. As compensation for loss of dependency is to be calculated on the basis of notional income because the deceased was a child. It by necessary implication takes into account future prospects, inflation, price rise etc.

18.Therefore keeping in view of Second Schedule of the Act, this Court do not see any reason to differ with the view taken by the Tribunal as well as the High Court in so far as award of pecuniary compensation to the dependents/claimants is concerned. We must point out here that the learned counsel for the appellants had argued that the notional sum of Rs. 15,000/- should be enhanced and increased as the legislature has not amended the Second Schedule and the same continues to be in existence since it was enacted on 14.11.1994. We are not examining and going into this aspect as the accident had taken place in the present case nearly three years after the enactment of the Second Schedule. The time difference between the date of the enactment and the date of accident is not substantial.

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.
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> 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) I 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 calculable. 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, Re87 Lord Halsbury, L.C. observed as under:
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> "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, (2001) 8 SCC 151, 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, at 486:

> "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.

35.With respect to the interest, the Tribunal had directed for payment of interest for only four years at the rate of 6% per annum from the date of filing of the claim petition till the award and in case of payment was not made within 30 days then further interest at the rate of 6% from the date of award till payment. In appeal, the High Court awarded 7 and = % per annum from the date of filing of the petition till payment. We find the interest awarded by the High Court as just and proper, so the same need not be disturbed.

36.The appeals are disposed of in terms of aforesaid order.

.....J.

[S.B. Sinha] .....J.

[Dr. Mukundakam Sharma] New Delhi May 15, 2009