

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED: 26.10.2018

SINGLE BENCH : THE HON'BLE ACTING CHIEF JUSTICE, MRS. JUSTICE MEENAKSHI MADAN RAI

MAC App. No. 10 of 2017

Appellant : The Branch Manager,
Shriram General Insurance Company
Limited,
Having its Branch Office at
142/14 Sevoke Road, 1st Floor,
Opposite PAN Card Office,
Beside Raymond Showroom,
District Darjeeling,
Siliguri, West Bengal.

versus

Respondents : 1. Mr. Churamani Sharma,
Son of late Dilli Ram Sharma.

2. Smt. Pushpa Devi Sharma,
Wife of Mr. Churamani Sharma.

Both are residents of
Padamchey Busty,
P.O. Pachak, P.S. Pakyong,
East Sikkim.

3. Mrs. Neelam Chettri,
Wife of Kumar Chettri,
Resident of Pacheykhani,
Pakyong, East Sikkim.
(Owner of vehicle SK-01-D/1001).

**Appeal under Section 173 of the
Motor Vehicles Act, 1988**

Appearance:

Mr. Yadev Sharma and Mr. Dilip Kumar Tamang, Advocates
for the Appellant.

Mrs. Vidya Lama and Mr. Nima Tshering Sherpa, Advocates
for Respondents No. 1 and 2.

Mr. Rajendra Upreti, Advocate for Respondent No. 3.

J U D G M E N T

Meenakshi Madan Rai, ACJ

1. The Motor Accidents Claims Tribunal, East Sikkim at Gangtok (*for short 'learned Tribunal'*), vide the impugned Judgment and Award dated 22.02.2017 in MACT Case No. 51 of 2015, directed the Appellant to pay a sum of Rs.6,72,500/- (Rupees six lakhs, seventy two thousand and five hundred) only, with interest at the rate of 10% per annum, on the said sum, to the Respondents No. 1 and 2, from the date of filing of the Claim Petition i.e. 21.12.2015, till full and final payment.

2. Aggrieved by the said Judgment and Award, the Appellant is before this Court assailing both, on one ground viz. that the learned Tribunal wrongly computed the Notional Income of the deceased, a minor aged 12 years at Rs.6,000/- (Rupees six thousand) only, per month. The other grounds were not pressed in Appeal.

3. The Respondents No. 1 and 2 herein, were the Claimants No. 1 and 2 before the learned Tribunal. The Appellant herein was the Opposite Party No. 2 and the Respondent No. 3 herein was the Opposite Party No. 1 before the learned Tribunal. They shall be referred to in their order of appearance before this Court.

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4. Before the learned Tribunal, the Respondents No. 1 and 2, sought compensation amounting to Rs.12,21,604/- (Rupees twelve lakhs, twenty one thousand, six hundred and four) only, on account of the death of their son, aged 12 years, on 08.06.2014 at around 15:30 Hrs, in a motor vehicle accident which occurred at Padamchey, about 12 kilometres south of Pakyong Police Station, Pakyong, East Sikkim.

5. The only argument accentuated by learned Counsel for the Appellant is that as the child was 12 years old at the time of the accident, hence, the learned Tribunal was in error in computing the compensation on the assumption that the loss of earning of the victim would be Rs.6,000/- (Rupees six thousand) only, per month. Seeking a modification of the compensation, attention was drawn to the decision of this Court in MAC App. No. 23 of 2015 (*The Branch Manager, National Insurance Company Limited vs. Mr. Pankaj Kumar Balabhai Kapadia and Others*), which while considering an Appeal filed by the Insurance Company where the learned Motor Accident Claims Tribunal, North Sikkim at Mangan had awarded a compensation of Rs.6,17,500/- (Rupees six lakhs, seventeen thousand and five hundred) only, to the Claimants No. 1 and 3, held that so far as the children between the age group of 10 to 15 years were concerned, their Notional Income was to be assessed at Rs.24,000/- (Rupees twenty four thousand) only, per annum and the Multiplier of 15 was

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found to be appropriate. This was in view of the decision of the Hon'ble Supreme Court in the case of *Lata Wadhwa and Others vs. State of Bihar and Others*¹. That the same consideration may be adopted while disposing of the instant Appeal.

6. Learned Counsel for the Respondents No. 1 and 2 would submit that the loss of a child cannot be calculated in pecuniary terms and no error obtains in the Judgment and Award computed by the learned Tribunal which ought to be left undisturbed.

7. I have considered the submissions of learned Counsel for the parties. I have also perused the documents and evidence on record.

8. The facts, as unfurled, reveal that the victim, son of the Respondents No. 1 and 2, aged 12 years was travelling from his residence at Padamchey on 08.06.2014, in vehicle bearing No. SK-01-D/1001, to the construction site of his uncle when the unfortunate accident occurred at Padamchey, about 12 kilometres south of Pakyong Police Station, Pakyong, East Sikkim which claimed his life.

9. It is not denied by either party that the deceased was 12 years old at the time of his death and studying in Class VI in a

¹(2001) 8 SCC 197

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Government Secondary School in Padamchey, Pakyong, East Sikkim.

10. In MAC App. No. 23 of 2015 referred to *supra*, this Court was examining the award of compensation of a sum of Rs.6,17,500/- (Rupees six lakhs, seventeen thousand and five hundred) only, to the Respondents No. 1, 2 and 3, the parents and sibling respectively of the victim aged about eight years by the learned Tribunal, her Notional Income having been computed at Rs.6,000/- (Rupees six thousand) only, per month. This Court took into consideration the ratiocination in *Lata Wadhwa's* case *supra*, and *inter alia* held as follows;

"...(7) In *Lata Wadhwa's* case (*supra*), while considering compensation for children who had died during celebrations within the Tata Iron and Steel Company (TISCO) factory in a devastating fire which had engulfed the VIP Pandal, the assessment of compensation to children was made after dividing them into groups based on their age. The first group was between the age of 5 to 10 years and the second group between the age of 10 to 15 years. In case of children between the age group of 5 to 10 years, a uniform sum of Rs.50,000/- was held to be payable by way of compensation to which the conventional figure of Rs.25,000/- was added and as such a consolidated sum of Rs.75,000/- each was awarded. These amounts had been arrived at on calculations made by Shri Justice Y.V. Chandrachud. The Hon'ble Apex Court while considering the said compensation was of the opinion that the amount for the children between the age group of 5 to 10 years should be three times over the suggested amount, in other words, it should be Rs.1.5 lakhs to which the conventional figure of Rs.50,000/- was added making it a total of Rs.2 lakhs for each of the children.

(8) So far as the children between the age group of 10 to 15 years were concerned, they were all students of Class 6 to Class 10 and children of employees of TISCO, which has a tradition of employing one child of its employee, in the Company. Having regard to these facts, in their case, the contribution of Rs.12,000/- per annum was found to be on the lower side and the contribution was calculated to be Rs.24,000/-. The multiplier of '15' was found to be appropriate. What is apparent from the decisions *supra* is that the amount of compensation for children between the age of 5 to 10 years was assessed at a total amount of Rs.2,00,000/- (Rupees two lakhs) only, while for children between the

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age group of 10 to 15 years, another assessment was made. ...”

11. In *Kishan Gopal and Another vs. Lala and Others*², the Hon’ble Supreme Court while relying on the decision in *Lata Wadhwa supra* also took into consideration the Notional Income for compensation of those who had no income prior to the accident as laid down in the Second Schedule of Section 163-A of the Motor Vehicles Act, 1988, at clause 6 and *inter alia* held as follows;

“... In our considered view, the aforesaid legal principle laid down in *Lata Wadhwa’s* case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs.15,000/-. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of *Sarla Verma v. Delhi Transport Corporation [2009 6 SCC 121]*, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000/- \times 15 = 4,50,000$ and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in *Kerala SRTC v. Susamma Thomas [1994 2 SCC 176]*, which is referred to in *Lata Wadhwa’s* case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants. ...”

12. It may appositely be stated here that in *Lata Wadhwa’s* case, the amount of compensation for children between the age group of 10 to 15 was assessed at Rs.4,10,000/- (Rupees

²(2014) 1 SCC 244

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four lakhs and ten thousand) only, inasmuch as the minor's contribution was assessed as Rs.24,000/- (Rupees twenty four thousand) only, per annum, the appropriate Multiplier of 15 was adopted and the compensation so calculated was Rs.3,60,000/- (Rupees three lakhs and sixty thousand) only, to which an additional sum of Rs.50,000/- (Rupees fifty thousand) only, was added on account of conventional heads.

13. In consideration of the aforesaid ratiocinations, it would not be incorrect to reach a finding that the Notional Income of the victim ought to be assessed at Rs.30,000/- (Rupees thirty thousand) only, per annum, his age being 12 years at the time of accident. There is no error in the adoption of the Multiplier of 15 as per the table in the case of *Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another*³ as also the decision in *Amrit Bhanu Shali and Others vs. National Insurance Company Limited and Others*⁴ wherein it was held that the age of the victim should be taken into consideration for choice of Multiplier and not that of the Claimants.

14. Thus, in light of the above discussions and findings, the compensation stands re-calculated and modified as follows;

Yearly Notional Income of the deceased	30,000 x 15	=	Rs.4,50,000.00
Loss of love and affection, funeral expenses and last rites	50,000	=	Rs.50,000.00
	Total		<u>Rs.5,00,000.00</u>

³ (2009) 6 SCC 121

⁴ (2012) 11 SCC 738

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(Rupees five lakhs) only

15. The Respondents No. 1 and 2 shall be entitled to simple interest @ 9% per annum on the above amount with effect from the date of filing of the Claim Petition before the learned Tribunal, until its full realisation.

16. The Appellant is directed to pay the awarded amount to the Respondents No. 1 and 2 within one month from today, failing which, the Appellant shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by the Appellant to the Respondents No. 1 and 2.

17. The impugned Judgment and Award of the learned Tribunal stands modified accordingly, and Appeal is allowed to that extent.

18. No order as to costs.

19. Copy of this Judgment be sent to the learned Tribunal and its records be remitted forthwith.

(Meenakshi Madan Rai)
Acting Chief Justice
26.10.2018

Approved for reporting: **Yes**
Internet: **Yes**

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