

Madhya Pradesh High Court

Atar Singh Lodhi vs Kalyan Singh Kushwah on 5 May, 2022

Author: Sunita Yadav

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M.A. Nos.525/2014, 526/2014 and 529/2014

IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR
BEFORE
HON'BLE SMT. JUSTICE SUNITA YADAV

MISCELLANEOUS APPEAL Nos. 525 of 2014

Between: -

1. ATAR SINGH LODHI S/O HEERA
LAL LODHI , AGED ABOUT 32 YEARS,
R/O PRESENT NAKA
CHANDRAVADNI, THANA
JHANSIROAD, (MADHYA PRADESH)
2. ASHISH S/O ATAR SINGH
LODHI, AGED ABOUT 9 YEARS, NAKA
CHANRA BADANI, THANA
JHANSIROAD, GWALIOR (MADHYA
PRADESH)
3. DHARMENDRA S/O ATAR SINGH
LODHI, AGED ABOUT 9 YEARS, NAKA
CHANDRAWADNI JHANSI ROAQD
LASHKAR (MADHYA PRADESH)
4. HEERALAL LODHI S/O LATE
SHRI PARSHU SINGH LODHI, AGED
ABOUT 75 YEARS, NAKA
CHANDRAWADANI THANA JHANSI
ROAD, GWALIOR (MADHYA
PRADESH)
5. SMT. JAIVO W/O HEERA LAL
LODHI, AGED ABOUT 70 YEARS,
NAKA CHANDRAWADNI JHANSI
ROAQD LASHKAR (MADHYA
PRADESH)

.... APPELLANTS

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M.A. Nos.525/2014, 526/2014 and 529/2014

(BY SMT. MEENA SINGHAL,
ADVOCATE)

VS

1. KALYAN SINGH KUSHWAH S/O
DAYARAM KUSHWAH R/O GRAM
KUMHAROUA, THAN ADINARA,

(MADHYA PRADESH)

2. RAHUL GUPTA S/O KEDAR
NATH GUPTA SARVODAY
NAGAR, SIDDESHWR COLONY,
SHIVPURI, (MADHYA PRADESH)

3. THE NEW INDIA ASSURANCE
COM.PTD. THR. DIVISIONAL
MANAGER MANDAL KARYALAY CITY
CENTRE GWL. GWALIOR (MADHYA
PRADESH)

....RESPONDENTS

(BY SHRI K.K. ROCHLANI, ADVOCATE FOR
RESPONDENT NO. 3 - INSURANCE COMPANY).

MISCELLANEOUS APPEAL Nos. 526 of 2014

Between: -

1. LAXMAN SINGH S/O DESHRAJ
LODHI , AGED ABOUT 27 YEARS, R/O
GRAM SIRSOD THANA AMOLA
(MADHYA PRADESH)

2. RAHUL S/O LAXMAN LODHI ,
AGED ABOUT 11 YEARS, GRAM
SIRSODA, THANA

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M.A. Nos.525/2014, 526/2014 and 529/2014

AMOLA, DISTT. SHIVPURI (MADHYA
PRADESH)

3. ROHIT S/O LAXMAN LODHI ,
AGED ABOUT 7 YEARS, GRAM
SIRSOD THANA
AMOLA, DISTT. SHIVPURI (MADHYA
PRADESH)

4. DESHRAJ LODHI S/O LATE SHRI
JAGANNATH LODHI , AGED ABOUT 66
YEARS, GRAM SIRSOD THANA
AMOLA (MADHYA PRADESH)

.... APPELLANTS

(BY SMT. MEENA SINGHAL,
ADVOCATE)

VS

1. KALYAN SINGH KUSHWAH S/O

DAYARAM KUSHWAH R/O GRAM
KUMHAROUA, THAN ADINARA,
(MADHYA PRADESH)
2. RAHUL GUPTA S/O KEDAR
NATH GUPTA SARVODAY
NAGAR, SIDDESHWR COLONY,
SHIVPURI, (MADHYA PRADESH)
3. THE NEW INDIA ASSURANCE
COM.PTD. THR. DIVISIONAL
MANAGER MANDAL KARYALAY CITY
CENTRE GWL. GWALIOR (MADHYA
PRADESH)

....RESPONDENTS

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M.A. Nos.525/2014, 526/2014 and 529/2014

(BY SHRI K.K. ROCHLANI, ADVOCATE FOR
RESPONDENT NO. 3 - INSURANCE COMPANY).

MISCELLANEOUS APPEAL Nos. 529 of 2014

Between:-

1. ATAR SINGH LODHI S/O SHRI
HEERA LAL LODHI , AGED ABOUT 32
YEARS, OCCUPATION: NIL VILLAGE
DULHAI THANA BHONTI, DIST.
SHIVPURI, HALL NAKA
CHANDRAVADANI THANA JHANSI
ROAD GWALIOR (MADHYA
PRADESH)
2. ASHISH S/O ATAR SINGH LODHI
, AGED ABOUT 12 YEARS, NAKA
CHANDRAWADANI THANA
JHANSIROAD, DISTT.GWL. (MADHYA
PRADESH)
3. DHARMENDRA S/O ATAR SINGH
LODHI , AGED ABOUT 9 YEARS, NAKA
CHANDRAWADANI THANA
JHANSIROAD, DISTT.GWL. (MADHYA
PRADESH)
4. HEERALAL LODHI S/O LATE
SHRI PARSHU SINGH , AGED ABOUT
70 YEARS, NAKA
CHANDRAWADANI, THANA
JHANSIROAD, DISTT.GWL. (MADHYA
PRADESH)
5. SMT.JAIWO W/O HEERA LAL
LODHI , AGED ABOUT 70 YEARS,

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M.A. Nos.525/2014, 526/2014 and 529/2014

NAKA CHANDRAWADANI THANA
JHANSIROAD, DISTT. GWL. (MADHYA
PRADESH)

.... APPELLANTS

(BY SMT. MEENA SINGHAL,
ADVOCATE)

VS

1. KALYAN SINGH KUSHWAH S/O
DAYARAM KUSHWAH R/O GRAM
KUMHAROUA, THAN ADINARA,
(MADHYA PRADESH)
2. RAHUL GUPTA S/O KEDAR
NATH GUPTA SARVODAY
NAGAR, SIDDESHWR COLONY,
SHIVPURI, (MADHYA PRADESH)
3. THE NEW INDIA ASSURANCE
COM.PTD. THR. DIVISIONAL
MANAGER MANDAL KARYALAY CITY
CENTRE GWL. GWALIOR (MADHYA
PRADESH)

....RESPONDENTS

(BY SHRI K.K. ROCHLANI, ADVOCATE FOR
RESPONDENT NO. 3 - INSURANCE COMPANY).

Reserved on : 11.04.2022

Whether approved for reporting :

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M.A. Nos.525/2014, 526/2014 and 529/2014

JUDGMENT

(Passed on 05.05.2022) These three miscellaneous appeals No. 525/2014, 526/2014 and 529/2014 have been filed under Section 173 of Motor Vehicle Act challenging the award dated 05/3/2014 passed by First Additional Motor Accident Claims Tribunal, Gwalior in Claim Case Nos. 154/2013, 153/2013 and 155/2013 respectively.

2. As per the case of claimants, on 26/5/2013, deceased Urmila, Suman and Puja were standing in front of the house of one Laxman situated at Sirsaud Square Sirsaud-Pichhore Road. They were waiting for the bus to come. At about 11:00 am when the bus arrived, they all, walked towards the bus to board on it. At that very moment, the respondent No.1/ non-claimant No.1 driving the

dumper bearing No. MPO4 GA 2292 rashly and negligently hit the deceased persons due to which they died on the spot.

3. The incident was reported to concerned the police station and the dependents/ legal representatives of the deceased persons filed the claim petitions mentioned in para 1 of this judgment before the Claims Tribunal for award of compensation.

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M.A. Nos.525/2014, 526/2014 and 529/2014

4. Respondents/ non-claimants No. 1 and 2 remained absent and did not appear before the Tribunal.

5. Respondent No.3/ non-claimant No.3 - Insurance Company filed its reply denying the facts alleged in the claim application and prayed to dismiss the claim applications.

6. The Tribunal passed the award dated 05/3/2014 against which all the appellants/claimants have preferred present miscellaneous appeals for enhancement of compensation amount on the ground that the Tribunal below has wrongly assessed the compensation amount. It is further contended that the evidence in respect to the income of the deceased persons as well as their age have not been properly appreciated by the Claims Tribunal.

M.A. No.525/2014 (in respect to deceased Urmila)

7. Learned counsel for the appellants argued that the Tribunal has wrongly applied the multiplier of 16 holding the age of the deceased 31 years whereas at the time of accident, the deceased was only 29 years old.

8. The claimants, however, neither filed any document e.g. a voter card, mark-sheet, birth certificate etc. of the deceased Urmila to prove her age, therefore, it would be appropriate to determine the age of the deceased on the basis of the post-

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M.A. Nos.525/2014, 526/2014 and 529/2014 mortem report. As per the post mortem report, at the time of death, the age of the deceased was 30 years. However, the Tribunal has held the age of deceased Urmila between 31 to 34 years, which is not found to be appropriate on the basis of the reasons mentioned as above. Consequently, for the purpose of assessment, the age of the deceased Urmila is fixed as 30 years for which multiplier of 17 will be applicable in the light of the law laid down by the Supreme Court in the case of National Insurance Company Ltd. vs. Pranay Sethi and Ors., (2017 ACJ 2700).

9. The Claimants have pleaded that the deceased was doing the work of tailoring and painting etc. and for which she was earning Rs.8,000/- per month. However, no reliable and cogent evidence was produced to prove the aforesaid fact, therefore, the Tribunal has rightly fixed the annual income of deceased Urmila at Rs.36,000/- per annum on the basis of the law laid down in the case of Lata Wadhwa vs. State of Bihar, (AIR 2001 SC 3218).

10. It is also apparent that the Claims Tribunal has not given any amount on the head of "Future Prospects".

11. Consequently, in view of the judgments passed in the cases of Lata Wadhwa (supra), Pranay Sethi (supra) as well as the

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M.A. Nos.525/2014, 526/2014 and 529/2014 judgment passed in the case of Hemraj vs. Oriental Insurance Co. Ltd., (2018 ACJ 5 SC), the compensation amount of Rs.9,26,800/- is found to be just and proper.

12. As such, the total amount awarded to the claimants is enhanced from Rs.7,05,000/- to Rs.9,26,800/-. The enhanced amount comes to Rs.2,21,800/- (Rupees Two Lakh Twenty One Thousand Eight Hundred only), with interest at the rate as fixed by the tribunal in the award which is ordered accordingly to be payable to the claimants as directed by the Tribunal in the same apportionment. The enhanced amount of compensation Rs.2,21,800/- shall be payable to the claimants within 12 weeks from the date of production of a certified copy of this order. Rest of the award impugned passed by the Tribunal shall remain intact.

M.A. No.526/2014 (in respect to deceased Suman)

13. Learned counsel for the appellants argued that the Tribunal has wrongly fixed the age of the deceased and, therefore, the multiplier applied for the assessment of the compensation is also inappropriate.

14. On perusal of the record, it appears that the claimants have produced the voter card of the deceased Suman, which is exhibited as P-24. In the voter card Exh. P-24, the year of birth

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M.A. Nos.525/2014, 526/2014 and 529/2014 of deceased Suman is mentioned as 1984. Since the accident has occurred in the year 2013, therefore, at the time of accident, the age of deceased Suman was 29 years as per her voter card. However, the Tribunal has fixed the age of the deceased as 35 years. When the voter card on which the exact age is mentioned the age should not have been fixed on the basis of post-mortem report. Therefore, for the purpose of assessment, the age of the deceased is fixed as 29 years and for that multiplier of 17 will be applicable in the light of the law laid down by the Supreme Court in the case of Pranay Sethi (supra).

15. So far as the income of the deceased is concerned, Learned counsel for the appellants has argued that the deceased Suman was earning Rs.8,000/- per month from making Badi, Papad, Pickles etc. However, in view of the fact that the deceased was living in a very small village and no documents are produced to corroborate the above fact, the Tribunal has rightly fixed the income of the deceased Suman at Rs. 36,000/- per annum as per the law laid down in the case of Lata Wadhwa (supra).

16. It is also apparent that the Claims Tribunal has not given any amount on the head of "Future Prospects".

17. Consequently, in view of the judgments passed in the

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M.A. Nos.525/2014, 526/2014 and 529/2014 cases of Lata Wadhwa (supra), Pranay Sethi (supra) as well as the judgment passed in the case of Hemraj vs. Oriental Insurance Co. Ltd., (2018 ACJ 5 SC), the compensation amount of Rs.9,26,800/- is found to be just and proper.

18. As such, the total amount awarded to the claimants is enhanced from Rs.7,05,000/- to Rs.9,26,800/-. The enhanced amount comes to Rs.2,21,800/- (Rupees Two Lakh Twenty One Thousand Eight Hundred only), with interest at the rate as fixed by the tribunal in the award which is ordered accordingly to be payable to the claimants as directed by the Tribunal in the same apportionment. The enhanced amount of compensation Rs.2,21,800/- shall be payable to the claimants within 12 weeks from the date of production of a certified copy of this order. Rest of the award impugned passed by the Tribunal shall remain intact.

M.A. No.529/2014 (in respect to deceased Puja)

19. Learned counsel for the appellants has argued that the compensation awarded by learned Tribunal is on the lower side. The deceased Puja was studying in school and had a very bright student, therefore, her annual income fixed by the Tribunal is inappropriate. The claimants have though produced some mark sheets allegedly of deceased Puja but the same were not proved

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M.A. Nos.525/2014, 526/2014 and 529/2014 by calling the record of the school.

20. The apex court in the case of New India Assurance Co. Ltd. vs. Satender & Ors., [(2006) 13 SCC 60] held as below:

"In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and

thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation".

21. In the case of State of Haryana and Anr. v. Jasbir Kaur and Ors., [2003 (7) SCC 484] it was held as under:

"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

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M.A. Nos.525/2014, 526/2014 and 529/2014 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."

22. In the light of the judgment passed by the Supreme Court in the case of Satender (supra) and Jasbir Kaur (supra) in the entirety of the facts and circumstances of the case, the amount of Rs. 2,25,000/- awarded by the Tribunal is found to be just and proper compensation and no interference is warranted in the same.

23. Appeals stand allowed to the aforesaid extent and disposed of.

ALOK KUMAR 2022.05.06 (SUNITA YADAV) 17:21:00 +05'30' 11.0.23 JUDGE AKS