

(2012) 07 KL CK 0157
In the High Court Of Kerala
Case No : M.A.C. A No. 2978 of 2008

A.M. Chacko, Rosamma Chacko, Dency Chacko and Soumya Chacko APPELLANT

Vs

K. Ganesh Moorthy @ Ganesh, Thiru S.C. Kumar and United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0157

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : K. Jaju Babu, Smt. M.U. Vijayalakshmi, Sri T.R. Sadeesan and Sri T.S. Shyam Prasanth, for the Appellant;

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The appellants are the unfortunate parents and siblings of one Prasanth Chacko who met with his death in a road traffic accident occurred on 14/01/02 while pillion riding a motorcycle which was hit down by a lorry coming from the opposite direction. Against the claim of Rs. 20 lakhs, the learned Tribunal awarded a sum of Rs. 2,14,000/- as compensation attributing negligence against the second respondent who was the driver of the lorry and saddling the third respondent with the liability of paying the compensation as they have admitted the policy of the offending vehicle. In this appeal, the appellants are challenging the adequacy of the compensation awarded by the Tribunal.

2. We have heard the Learned Counsel for the appellants and the Learned Counsel for the third respondent Insurance Company. The impugned award was also perused.

3. The main grievance voiced against the award by the Learned Counsel for the appellants is that the appellants were not awarded adequate compensation for

loss of dependency. It was submitted by the Learned Counsel for the appellants that the deceased Prasanth Chacko was only 20 years at the time of the accident and he was doing his third year mechanical engineering in an engineering college at Hossur. According to the Learned Counsel for the appellants, he was a promising brilliant student. The learned Tribunal fixed the notional income of the deceased at Rs. 1,250/- for arriving at the compensation for loss of dependency. The accident was in the year 2002. Considering the age of the deceased, the academic brilliance of the deceased as well as his future prospects we fix the notional income of the deceased at Rs. 5,000/-. The first appellant who is the father of the deceased was aged 57 years and the second appellant who is the mother of the deceased was aged 44 years at the time of the accident. For computing the compensation for loss of dependency we lean ourselves to the multiplier applicable to the age group of mother who is younger among the parents. The correct multiplier applicable to the age group of the mother who is the second appellant as per the decision of the Apex Court in *Sarla Verma v. Delhi Transport Corporation* (2010(2) KLT 802 SC) is 14. As the deceased was unmarried one half of the income has to be deducted in consideration of the expenses which the deceased would have incurred had he been alive. When the dependency compensation is re-calculated as above it will stand enhanced to Rs. 4,20,000/-. As the learned Tribunal has awarded only Rs. 1,70,000/- under that head, the appellants become entitled to get an additional sum of Rs. 2,50,000/- towards compensation for loss of dependency.

4. It was submitted by the Learned Counsel for the appellants that the death was instantaneous. However, no amount was seen awarded by the Tribunal towards compensation for pain and suffering. Taking into account the excruciating pain undergone by the deceased at the time of his death, we are inclined to award a sum of Rs. 10,000/- towards compensation for pain and suffering.

5. We also notice that the learned Tribunal was miserly in awarding compensation for funeral expenses. As the amount awarded by the Tribunal under that head is only Rs. 3,000/- we award an additional sum of Rs. 2,000/- under that head.

6. Towards loss of estate no amount was seen awarded by the Tribunal and we award to the appellants a sum of Rs. 5,000/- under that head.

7. As the learned Tribunal has awarded a fair and reasonable sum as compensation for loss of love and affection, we are not awarding any additional amount under that head.

8. Thus in total the appellants get a sum of Rs. 2,67,000/- over and above what has been awarded by the Tribunal. It was further submitted by the Learned Counsel for the appellants that the rate of interest awarded by the Tribunal is only 6%. We feel justification in awarding 7% interest on the amount already awarded as well as on the additional amount awarded by us. Hence, we make it clear that the amount already awarded as well as the additional amount awarded shall carry interest at the rate of 7% per annum from the date of claim petition

till realisation. The appeal is allowed. The impugned award shall stand modified as above.