(2023) 07 KL CK 0009

In the High Court Of Kerala

Case No : Motor Accident Claims Appeal Nos. 2532, 2533 Of 2008

Amina Ummal APPELLANT

Vs

K.M.Yahyes RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Citation : (2023) 07 KL CK 0009

Hon'ble Judges : C.Jayachandran, J

Bench : Single Bench

Advocate : Latheesh Sebastian, Domson J.Vattakuzhy, Mathew John K, Mathews K.Philip, N.S.Mohammed Usman

Final Decision : Allowed

Judgement

C.Jayachandran, J

1. Both these appeals arise from the common award of the Motor Accident Claims Tribunal, Thodupuzha arising from O.P(M.V).Nos.781/2004 and 117/2005. The above referred original petitions arose from the same accident, which took place on 28.07.2004, when a lorry fully loaded with timber capsized, causing injury to the claimant in O.P(M.V).No.117/2005 and the death of one Abdul Rahman, the legal heirs of whom are the claimants in O.P(M.V).No.781/2004. The claimants in both the original petitions are in appeal, essentially, aggrieved by the exoneration of the third respondent/insurance company by the Tribunal, on the premise that the policy in question was only an 'Act Only Policy'. The appellants are also challenging the quantum of compensation granted by the Tribunal.

2. Heard Sri.Mathew John, learned counsel for the appellants and Sri.N.S.Muhammed Usman, learned counsel for the third respondent/insurance company. Perused the records.

3. This Court will first deal with the question of the exoneration of the insurance company's liability for reason of the policy being an 'Act only' one. The short

point canvassed by the learned counsel for the appellants is that, even assuming that the claimant in O.P(M.V).Nos.117/2005 and Sri.Abdul Rahman (whose legal heirs are the claimants in O.P(M.V).781/2004) are considered as gratuitous passengers, still, going by the prevailing legal position, the insurance company, at the first instance, is liable to make good the loss sustained to the claimants and then seek recovery from the owner. They cannot seek complete exoneration, as has been done by the Tribunal. Learned counsel relied on the judgment of this Court in United India Insurance Co.Ltd. v. Rijawana Jamshed Mulla [2020(5) KLT 32], in which, a learned Single Judge has relied upon an authoritative pronouncement of the Supreme Court in Manager, National Insurance Company Limited v. Saju P.Paul and Another [(2013)2 SCC 41]. Learned counsel also placed reliance upon other judgments of the Honourable Supreme Court, which are specifically referred in Rijawana Jamshed Mulla supra.

4. Per contra, learned counsel for the third respondent/insurance company submitted that, in as much as there exists a specific violation of a policy condition, the insurance company is not liable to compensate the claimants and to seek recovery from the owner. Learned counsel would elaborate that an insurance policy is essentially a contract and the rights and liabilities of the contracting parties should be only in accord with the terms of the contract; and not otherwise.

5. Having heard learned counsel appearing on both sides, this Court can only endorse the submissions made by the learned counsel for the appellants in both the appeals. The legal position precisely on the question of compensating the claimants and then seeking recovery from the owner in the case of an 'Act only' policy, was addressed by the Honourable Supreme Court in Saju P.Paul supra, as also, in Manuara Khatun v. Rajesh Kr. Singh [(2017)4 SCC 796]. A perusal of the above decisions would leave no room for any doubt that, in cases of gratuitous passengers traveling in a goods vehicle, though the insurance company is not strictly liable to compensate the claimants, it is only just and equitable, having regard to the facts, to mulct the responsibility to pay the compensation on the Insurance Company at the first instance, simultaneous with the right to recover it from the owner of the vehicle. This, in fact, is in accord with the larger concept and principle behind insurance of vehicles, whereby innocent third parties should not be made to suffer on account of the lacuna, if any, in the policy. It requires to be noted that the accident took place as far back as on 2004, as a result of which one lost his life and another, seriously injured. This Court, therefore, follow the judgments of the Honourable Supreme Court afore-referred to hold that complete exoneration of the third respondent/insurance company made by the Tribunal is not legal. This Court holds that the compensation amount, which is liable to be paid to the claimants, shall be paid by the third respondent/insurance company in both the original petitions, which are the subject matter of these appeals, at the first instance, with a simultaneous right to recover the same from the respective owners subsequently.

6. The next issue is with respect to the adequacy of the quantum of compensation granted by the Tribunal.

7. M.A.C.A.2532/2008 [Death Case] As already indicated, the accident took place on 28.07.2004 and age of the deceased, going by the claim petition, is 43 years. There is no quarrel in respect of that fact, either before the Tribunal or before this Court. The claimants claimed a monthly income of Rs.4,500/- for the deceased, who was engaged in work related to timber at the time of his death. The Tribunal reckoned only Rs.2,000/-. Even going by the index available in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236], the notional income to be reckoned for the year 2004 is Rs.4,500/-, as claimed in the original petition. It is therefore reckoned so.

8. The next issue is with respect to the multiplier applied by the Tribunal, i.e, 13. Learned counsel pointed out that, for a person aged 43 years, 14 is the correct multiplier, which argument is not refuted or disputed by the learned counsel for the insurance company. The multiplier to be taken therefore is 14, instead of 13 as adopted by the Tribunal.

9. It was then pointed out that, no amount, whatsoever, was granted towards 'future prospects'. Going by the larger Bench decision of the Honourable Supreme Court in National Insurance Co. Ltd. v. Pranay Sethi [2017(4) KLT 662 (SC)], the claimants are entitled to future prospects at the rate of 25%. The submission is well founded and the same is also accepted.

10. It was argued that, in as much as the deceased is survived by four dependents, only 1/4th of the amount alone is liable to be deducted, which contention is also to be accepted. It is accordingly held that loss of dependency has to be worked out reckoning the salary at Rs.4,500/-, with the multiplier 14 and future prospects at the rate of 25%.

11. The remaining counts are with respect to the expenses for transportation, funeral expenses and loss of estate. For transportation, nothing has been reckoned by the Tribunal, under which head, this Court is inclined to grant a sum of Rs.1,500/-. As regards, funeral expenses and loss of estate, the legal position is settled by Pranay Sethi supra, which entitles the claimants for an amount of Rs.15,000/- each. Under both the heads, the claimants are entitled to 10% enhancement for efflux of the time period beyond 3 years, as contemplated in Pranay Sethi supra.

12. The last count, under which, the counsel seek enhancement is 'loss of consortium'. It was pointed out that the deceased is survived by four dependents, namely, the widow, two sons and daughter, all of whom are entitled to a sum of Rs.40,000/- each towards loss of consortium, along with an increase of 10% in terms of Pranay Sethi supra. However, the sum awarded under the head 'love and affection' has to be obliterated. The submission is well conceived and the same is accepted.

13. This M.A.C.A is accordingly allowed and the compensation amount payable to the claimants in O.P(M.V).No.781 of 2004 (MACA 2532/2008] is reworked as indicated in the tabular statement shown below.

Sl.

No.

Head of Claim

Amount awarded by the Tribunal

Total amount after enhancement in appeal

1

Loss of Contribution and dependency

207948

7,08,750*

2

Transportation and

5000

1,500

Funeral Expenses

16,500 [15000+(15000x10/100)]

3

Loss of Estate

Nil

16,500 [15000+(15000x10/100)]

4

Loss of Consortium

10000

1,76,000 [40,000x4]x110/100

5

Loss of Love and Affection

10000

Nil

6

Pain and Suffering

5000

Nil

Total

237948

9,19,250

Amount enhanced = Rs.9,19,250 – Rs.2,37,948 = Rs.6,81,302/-

[* 4,500 x 12 x 14 x 125/100 x 3/4]

14. M.A.C.A.2533/2008 [Injury Case]

Here again, the income reckoned by the Tribunal was Rs.2,000/-, as against Rs.4,000/- claimed by the injured/claimant. The injured was again a timber worker and going by the index available in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236], the monthly income of Rs.4,000/- claimed cannot be said to be excessive. Therefore, the same is reckoned. As regards loss of earnings, the Tribunal reckoned only four months. Learned counsel invited the attention of this Court to the narration in paragraph nos.19 and 20 of the impugned award to highlight the extensive injuries sustained by the claimant, including multiple fractures, requiring hospitalization for a period of 21 days. It was pointed out that, three ribs were fractured, besides there being lung contusion. Facio maxillary injuries were there and there was a frontal bone fracture as well, with another fracture at pneumocephalous. There was fracture on the mandible, besides avulsion of four teeth from the upper jaw and two teeth from the lower jaw. In the year 2004, the claimant had incurred a treatment expenditure of Rs.78,667/-, besides medical bills for Rs.34,302/-. The above aspects are highlighted only to notice that substantial injuries were sustained by the claimant and loss of earnings for a period of four months is grossly insufficient, especially taking into account the avocation of the claimant as a timber worker. The facts and circumstances and the interest of justice demands that a period of eight months is liable to be reckoned for the purpose of calculating loss of earnings, which has to be calculated reckoning monthly income at Rs.4,000/-. No amount is granted under the head 'bystander expenses' and 'extra nourishment'. An amount of Rs.250/- each is liable to be reckoned under both the heads. Admittedly, the claimant was hospitalized for 21 days, as is discernible from Ext.A7 discharge certificate.

15. The next major head, under which the claimant seeks enhancement is 'pain and suffering', where the Tribunal has reckoned only Rs.18,000/-. Here again, this Court takes into account the vast and extensive injuries, which this Court had already referred to above and taken note of by the Tribunal in paragraph

nos. 19 and 20 of the award. This Court is of the opinion that, a sum of Rs.50,000/- would be reasonable under the head 'pain and suffering', taking into account the extensive injuries and several fractures sustained by the claimant. Under the head 'loss of amenities', the Tribunal has reckoned only Rs.6,000/-. True that, no certificate indicating permanent disability has been produced. However, once again reckoning the extensive injuries and the fractures sustained by the claimant and taking into account his avocation as a timber worker, this Court is inclined to enhance the loss on account of amenities to Rs.15,000/-.

16. In the result, the compensation amount payable to the claimants in O.P(M.V).No.117 of 2005 [M.A.C.A.No.2533 of 2008] is reworked and indicated in the tabular statement herebelow.

Sl.

No.

Head of Claim

Amount awarded by the Tribunal

Total amount after enhancement in appeal

1

Loss of Earning

8000

32,000 [4,000 x 8]

2

Transportation

1500

1,500

3

Extra Nourishment

1500

5,250 [250 x 21]

4

Bystander expenses

2000

5,250 [250 x 21]

5

Treatment Expenses

34300

34, 300

6

Pain and Suffering

18000

50,000

7

Discomforts, inconveniences and loss of amenities and enjoyment in life

6000

15,000

Total

71300

1,43,300

Amount enhanced = Rs.1,43,300 – Rs.71,300/ = Rs.72,000

17. In as much as these appeals are allowed, the compensation amount fixed in both these cases shall be paid by the insurance company concerned at the first instance. However, the insurance company will be at liberty to recover the same from the registered owner of the lorry. The insurance company shall pay interest for the amount awarded by the Tribunal at the rate directed in the impugned award; and for the enhanced amount, at the rate of 7%, both from the date of original petition. If any amount has already been paid, the same shall be granted set off. In M.A.C.A.No.2533 of 2008, since there was a delay of 215 days in filing the appeal, the interest for the enhanced quantum shall not run for the said period, as directed in order dated 11.11.2013 in C.M.A.No.2607/2008. Similarly, in M.A.C.A.No.2532 of 2008, since there was a delay of 215 days in filing the appeal, the interest for the enhanced quantum shall not run for the said period, as directed in order dated 17.01.2022 in C.M.A.No.1/2008 [Old C.M.A.No.2606/2008].

18. The claimant shall produce the details of the Bank account before the Insurance Company/Tribunal within two months from the date of receipt of a certified copy of this judgment and amount shall be transferred to the Bank account directly through NEFT/RTGS mode, within a period of one month thereafter. If the Bank account is not given within the time stipulated, it is made clear that, no interest shall run on the enhanced amount after the period stipulated by this Court. However, if the Insurance Company fails to deposit the

amount, as directed, interest on the enhanced amount shall also run at the rate ordered by the Tribunal from the date of petition.

The appeals are allowed as indicated above.

