

(2010) 01 KL CK 0108
In the High Court Of Kerala
Case No : M.A.C.A. No. 849 of 2006

Annamma Mathew, Anitha Rani Mathew, Anila Mathew and Anish Mathew APPELLANT

Vs

Alichen Varghese Kutty, Kochumon Jacob, The New India Assurance Co. Ltd. and M.V. Chacko RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Citation : (2010) 01 KL CK 0108

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : Mathew John K, for the Appellant; Mathews Jacob (SR.), for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—Claimants are the appellants. They are the wife, two major daughters and a minor son of the deceased. The deceased suffered injuries and succumbed to such injuries in a motor accident which occurred on 20/02/2001.

2. The tribunal awarded an amount of Rs. 3,38,804/- as compensation along with interest at the rate of 6% p.a from the date of the petition. Of this, an amount of Rs. 3,12,000/- was directed to be paid by way of compensation for loss of dependency.

3. The learned Counsel for the appellants contends that the quantum of compensation awarded is not just and reasonable. What are the grounds? The learned Counsel for the appellants raises two specific grounds. The learned Counsel for the appellants submits that there was unimpeachable evidence to show that the deceased had two more months for retirement on superannuation from Government service. And that, on such superannuation, he was entitled to a basic pension of Rs. 3,975/-. Ext.A13 is the said certificate. The learned Counsel for the appellants contends that the Tribunal, most unreasonably and

without any jurisdiction, reckoned the multiplicand at Rs. 3,000/-. There was no discernible reason for reducing that small amount of Rs. 3,975/- further to Rs. 3,000/-.

4. We find merit in this contention. In any view of the matter, the pension for the deceased could only have been greater than Rs. 3,975/-. Possible increase in future and possible dearness allowance which are to be added on to the basic pension have not been taken into reckoning. Of course, there is no specific evidence on that aspect. At any rate, we agree unreservedly with the learned Counsel for the appellant that there is no justification to reduce the amount of Rs. 3,975/- payable as monthly basic pension to Rs. 3,000/- while ascertaining the multiplicand. The learned Counsel for the insurer submits that this deduction is justified as the family would be entitled for family pension in the event of death of the deceased. We are unable to agree that this can be a valid reason to scale down the actual basic pension which the deceased would have been entitled to receive while ascertaining the multiplicand.

5. The learned Counsel for the insurer further contends that the tribunal has wrongly reckoned 13 to be the multiplier whereas under the latest decision summarising the law on the question, that is Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , it has been held unambiguously that 11 must be reckoned as the multiplier. The learned Counsel for the appellants does not dispute the multiplier as per Sarla (Supra).

6. The learned Counsel for the appellants contends that if Sarla (Supra) were followed in letter and spirit, only 1/4th of the pension amount can be deducted by way of personal expenses of the deceased and the tribunal should not have deducted 1/3rd .

7. We have been taken through the relevant portions of Sarla (Supra). Respondents 2 and 3 are shown to be adult major daughters though they are not married. Sufficient materials to indicate that they are totally depending on the deceased is not made available. At any rate, we are not satisfied that the normal and usual deduction of 1/3rd need not be further reduced in the facts and circumstances of the case. It follows that the appellant would be entitled to a further amount of Rs. 37,800/- under this head of loss of dependency that is Rs. 3,975/- x 2/3 x 12 x 11 i.e. Rs. 3,49,800/- minus Rs. 3,12,000/- (Rs.3,000/- x 2/3 x 12 x 13). The challenge on this first ground must hence succeed to the above extent.

8. The learned Counsel for the appellants secondly relies on the decision in Dharampal v. U.P State Road Transport Corporation 2008 (2) KLT 691 (SC) to contend that the rate of interest awarded at 6% p.a is grossly inadequate. We find force in that submission. We are satisfied that the challenge on this ground is also bound to succeed.

9. In the result,

- a) This appeal is allowed.
- b) The impugned award is modified. It is found that the appellants are entitled to a further amount of Rs. 37,800/- (Rupees thirty seven thousand and eight hundred only) as compensation under the head of loss of dependency.
- c) It is further directed that the appellants shall be entitled to interest on the entire amount awarded at the rate of 7.5% from the date of the claim to the date of payment. Costs as directed by the tribunal shall also be payable.
- d) We however direct that no interest shall be payable for a period of one year for the enhanced amount which is the period of delay in filing this appeal.