(2012) 03 KL CK 0046

In the High Court Of Kerala

Case No : M.A.C.A. No. 768 of 2007

Bindhu M.M., Vadakkedathukarottu (Mannanamadathil), Kummannoor, Karthika Vijayan, Aswathy Vijayan and Karthiyani Parameswaran — APPELLANT

Vs

C.S. Thampy, Chalil (H), Puthuvely P.O., Monippally, Kunnappallil, Uppukandam Bhagom, Oliappuram P.O. Thirumarady and National Insurance Co. Ltd., Pala — RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0046

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : C.M. Tomy and Sri. Mathew Skaria, for the Appellant; Lal George, R3, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The legal heirs of an employee of BSNL one Vijayan who lost his life in a road traffic accident which occurred due to the negligence on the part of the driver of a vehicle which was insured with the third respondent Insurance Company complain that the Tribunal did not award them adequate compensation for the death of Vijayan. Their total claim for compensation was Rs. 12,02,500/- and the Tribunal under the impugned award awarded only Rs. 6,51,240/- . In the memorandum of appeal it is urged that the compensation awarded by the Tribunal under various heads is inadequate. The adequacy of the dependency compensation is specifically challenged. It is urged that the Tribunal was not justified in adopting the monthly income of the deceased as only Rs. 5052/- . Notwithstanding Ext.A6 which reflected a total monthly remuneration of Rs. 7885/- reliance placed on B1 was not justified, it is urged. The adequacy of the compensation awarded under other heads is also challenged.

2. We have heard the submissions of Mr. C.M. Tomy, counsel for the appellant

and those of Mr. Lal George, learned standing counsel for the Insurance Company. Drawing our attention to Ext. A6 and Ext. B1 Mr. Tomy argued that it was Ext.A6 which should have been followed and not Ext.B1. Mr.Tomy submitted that the amounts awarded towards loss of consortium, love and affection and other heads are inadequate. Per contra Mr. Lal George, standing counsel for the Insurance Company submitted that the learned Tribunal has awarded reasonable compensation under the various heads. According to Mr. Lal George, there is no warrant for giving further increase. We have given our anxious consideration to the rival submissions addressed at the Bar. We have very carefully gone through the impugned award. We have re-appreciated Exts.B1 and A6. We find force in the submission of the Learned Counsel for the appellant. We also keep in mind the principles laid down by the Supreme Court in Sarla Verma v. Delhi Transport Corporation (2010(2) KLT 802 SC) and take into account the future service prospects of the deceased who was only 40 years at the time of the accident. We are of the view that taking into account all relevant inputs the monthly income of the deceased can be adopted to be Rs. 7500/- for the purpose of calculating dependency compensation. The multiplier has been adopted correctly and correct deduction also has been made by the Tribunal. When the dependency compensation is recalculated adopting correct multiplicand it will be seen that the appellants are entitled for a further amount of Rs. 2,93,760/- . We award that amount to the appellant as further compensation towards dependency. We notice inadequacy in the compensation awarded by the Tribunal in some of the other heads also. Therefore we award an amount of Rs. 2000/- towards funeral expenses. According to us, the amount awarded by the Tribunal towards love and affection is quite inadequate. We award a further amount of Rs. 10,000/- towards loss of love and affection. The wife of the deceased was only 30 years at the time of the accident and we award to her a further amount of Rs. 10,000/- towards loss of consortium. We find that no compensation is awarded towards loss of estate and we award an amount of Rs. 5000/- towards loss of estate. Thus in all we award to the appellant Rs. 3,20,760/- over and above what is awarded by the Tribunal. This amount will also carry interest at the same rate as awarded by the Tribunal.

Appeal is allowed as above, however, without any order as to costs.

