

(2012) 07 KL CK 0229
In the High Court Of Kerala
Case No : M. A. C. A No. 1235 of 2005

Jaganmayan Balaji and Others

APPELLANT

Vs

Kunjuraman and Others

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0229

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

Bench : Division Bench

Advocate : C. Rajendran, for the Appellant; E.M. Joseph, - R3, R6, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The appellants are the children and aged mother of a 49 year old newspaper agent by name Lambodaran Namboodiri who met with his death in a road traffic accident on 03/12/99 while travelling by an autorickshaw which collided with a lorry coming from the opposite direction. Attributing negligence against the second respondent who was the driver of the lorry the third respondent Insurance Company was saddled with the liability of paying the compensation by the Tribunal. Against the claim of Rs. 10 lakhs, the sum of Rs. 4,98,000/- was awarded by the Tribunal. In this appeal, the appellants are challenging the adequacy of the compensation awarded.

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 learned counsel for the appellants relied on Exts.A12 and 13 series bills issued by the newspaper companies of whom the deceased was acting as an agent. The fact that the deceased was an agent of Mathrubhumi daily as well as Kerala Kaumudi daily is not in dispute. Though the appellants claimed that the deceased was earning a monthly income of Rs. 11,500/-, the Tribunal fixed the

monthly income of the deceased at Rs. 4,500/-. The accident was in the year 1999. It is practically admitted that even after the death of the deceased his children are continuing the agency business. So it cannot be said that there was considerable reduction in income from the agency business on account of the death of the deceased. It was submitted by the learned counsel for the appellants that in addition to the agency business the deceased was also a Poojari and he was earning substantial income on account of that profession. Considering all the relevant circumstances we are of the view that the monthly income fixed by the learned Tribunal is quite reasonable. The learned Tribunal has adopted the correct multiplier also. However we notice that the deceased is survived by one daughter and three sons at the time of the accident. As the appellants are four in number only one fourth of the amount has to be deducted in consideration of the expenses which the deceased would have incurred had he been alive. Then the dependency compensation will come to Rs. 5,26,000/-. The learned Tribunal has awarded only a sum of Rs. 4,68,000/- under that head. Hence, we award an additional sum of Rs. 58,000/- on that count.

4. However we notice that only a sum of Rs. 3,000/- was awarded by the Tribunal towards funeral expenses. We award to the appellants a sum of Rs. 2,000/- more towards funeral expenses as we feel inadequacy in the amount awarded by the Tribunal.

5. We notice that no compensation was awarded by the Tribunal towards loss of estate. We award a sum of Rs. 5,000/- to the appellants under that head.

6. As the learned Tribunal has awarded just and reasonable sum towards pain and suffering, we are not inclined to interfere with the same.

7. The appellants are the aged mother, daughter and sons of the deceased. The first appellant who is the son was aged 19 years, second appellant who is the daughter was aged 18 years, and third appellant who is the son was aged 16 years and the fourth appellant who is the son was aged 14 years at the time of the death. Towards loss of love and affection the Tribunal has awarded only a sum of Rs. 15,000/-. As we notice that the children of the deceased had lost their father at their tender age, we are of the view that they are entitled to get just and fair compensation for loss of love and affection. It was submitted by the learned counsel for the appellants that their mother predeceased the victim. As we feel inadequacy in the amount of compensation awarded by the learned Tribunal towards loss of love and affection, we award to them an additional sum of Rs. 30,000/-.

8. Thus in total the appellants are entitled to get an additional sum of Rs. 95,000/- over and above what has been awarded by the Tribunal. The interest awarded by the learned Tribunal over the amount awarded is only 6%. We are of the view that the appellants can be awarded interest at the rate of 7% per annum on the amount already awarded as well as the additional amount awarded by us. The appeal is allowed. The impugned award shall stand modified

as above.