

(2013) 12 KL CK 0052
In the High Court Of Kerala
Case No : M.A.C.A. No. 1850 of 2009

Jaya

APPELLANT

Vs

Shaji

RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) 2 ACC 911 : (2014) ACJ 1378 : AIR 2014 Ker 19 : (2014) 1 KHC 4 : (2014) 1 KLJ 174 : (2014) 1 KLT 31

Hon'ble Judges : S. Siri Jagan, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : P.K. Sajeev, for the Appellant; Lal George, Siby Mathew, Philip J. Vettickattu and B. Premnath (E), for the Respondent

Judgement

K. Ramakrishnan, J.—The claimants, who are the legal heirs of deceased Ramesh, in O.P. (MV) No. 2213/2002 on the files of the Motor Accidents Claims Tribunal, Kottayam, are the appellants herein. Deceased Ramesh sustained injuries in a motor vehicle accident which happened on 10.7.2000, on account of the negligent driving of a vehicle driven by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent. Subsequently, he died on 25.12.2001. It is after the death of the deceased that the appellants filed the application for compensation for the injuries and disability suffered by Ramesh. But, since the Insurance Company has contended that the legal heirs are not entitled to maintain an action for the personal injuries sustained by the deceased, they filed I.A. No. 496/2005 for amendment of the claim petition treating the claim one for compensation for the death of Rajesh. After considering the evidence on record, the Tribunal found that the accident occurred due to the negligent driving of the vehicle by the 1st respondent, but found that since the appellants have failed to prove that the deceased died on account of the injuries sustained in the accident and they are not entitled to maintain an action for personal injuries of the deceased, dismissed the application for compensation. Aggrieved by the dismissal of the claim petition by the Tribunal, the appellants have filed this appeal before this Court. Heard the counsel for the

appellants and the counsel for the Insurance Company.

2. Counsel for the appellants submitted that even if the appellants were not able to prove that the deceased Rajesh died on account of the injury sustained in the accident, the Tribunal ought to have treated the claim as one for compensation for the injuries sustained by the deceased which the appellants are entitled to claim as his legal heirs. The appellants contend that the Tribunal went wrong in coming to the conclusion that for the personal injuries sustained by the deceased, the appellants are not entitled to make an application for compensation as in the case of death and, the person who sustained injury alone is entitled to maintain an application under S. 166 of the Motor Vehicles Act, in view of the provision of the Kerala Tort (Miscellaneous Provisions) Act, 1977, which is an exception to S. 306 of the Indian Succession Act. By virtue of the provisions of that Act, the legal heirs are entitled to maintain an action for the personal claims of the deceased as well is the contention. So, the Tribunal was not justified in dismissing the application on that ground, they would submit. So, according to the learned counsel for the appellants, the appellants are entitled to maintain the claim for compensation for the personal injuries sustained by deceased Ramesh and they are entitled to be awarded the compensation for the personal injuries of the deceased since the compensation enures to the estate of the deceased, which the claimants are entitled to succeed to.

3. On the other hand, the learned Counsel for the Insurance Company submitted that since the injured did not file the application during his life time, the appellants, as the legal representatives, are not entitled to maintain an action for compensation independently as a personal action for compensation for injuries of the deceased would not survive to the legal heirs. So, according to the learned counsel, the Tribunal was perfectly justified in dismissing the application.

4. We have considered the rival contentions of both parties in detail.

5. It is an admitted fact that Rajesh sustained injuries in a motor vehicle accident and the Tribunal also found that the accident occurred due to the negligent driving of the vehicle by its driver. It is also an admitted fact that he sustained severe injuries and underwent treatment for long time and thereafter he died later on 25.12.2001. It is true that there is no evidence adduced on the side of the appellants to prove that he died due to the injuries sustained by him in the accident. The Tribunal dismissed the application on the ground that the personal action will not survive after the death of the person under the principle *actio personalis moritur cum causa* (persona) (personal action will die with the person). But the Tribunal failed to understand that by virtue of S. 2 of the Kerala Torts (Miscellaneous Provisions) Act, 1977 (Act 8 of 1977), (hereinafter called "the Act"), the cause of action on account of the personal claim would survive to the legal heirs. S. 2 of the Act reads as follows:

2. Effect of death on certain causes of action:- On the death of any person after the commencement of this Act, all causes of action subsisting against or vested

in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this section shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

Further, in the decision reported in *Ali (Late) v. Sumesh* (2010 (3) KLT 70), this Court has held that S. 2 of the above Act is incorporated to undo the restriction introduced by S. 306 of the Indian Succession Act. Further, in the decision reported in *Anuradha Varma and Others Vs. State of Kerala*, this Court, while interpreting Sections 2 and 9 of the above Act, has held that legal representatives are entitled to initiate action for such damages or to proceed with the claim already made by the injured and that they are entitled to claim compensation under the head "pain and suffering" of the deceased apart from other amounts payable to the injured as his legal heirs. So, under the circumstances, the Tribunal was not justified in dismissing the claim of the appellants on the ground that the personal action available to the deceased will not survive to his legal heirs after his death and the dismissal of the claim on that ground is unsustainable in law. In view of the discussions made above, the finding of the Tribunal to that effect is liable to be set aside. We do so. We hold that the application is maintainable and the appellants are entitled to claim compensation for the personal injury sustained by the deceased.

6. The next question is what is the compensation payable to the deceased, which the appellants are entitled to claim as his legal heirs. It is seen from the award of the Tribunal that he suffered the following injuries:

Laceration right side of forehead, laceration upper eyelid, laceration left side of nose, laceration left leg, abrasion chest and right side of left wrist, avulsion 12th tooth, contusion nose and left wrist, fracture left frontal bone, contusion left frontal lock and subarachnoid hemorrhage.

It is also seen from the documents produced that he was treated as in-patient for 36 days. The claim of the appellants was that the deceased was a fish vendor and getting Rs. 4,000/- per month at the time of the accident. But, no evidence has been adduced on the side of the appellants to prove his avocation or income. Noting the facts that the accident occurred in the year 2000 and the deceased was 51 years old at the time of his death and also the living conditions and cost of living at that time, we feel that a person of that status in life can be expected to earn at least Rs. 2,000/- per month including his probable future prospects. Therefore, we fix Rs. 2,000/- as his monthly income.

7. Considering the nature of injuries sustained, we are satisfied that the deceased would not have been able to attend to his work at least for five months. So, the deceased is entitled to get Rs. 10,000/- under the head "loss of earnings" which the appellants are entitled to inherit. We award Rs. 1,000/- under the head "transport to hospital", Rs. 2,500/- under the head "extra nourishment" and Rs. 3,600/- under the head "bystander's expenses". The

appellants have produced Ext. A6 series of medical bills proving medical expenses of Rs. 39,000/-. This amount was spent for the treatment of the deceased, which the appellants are entitled to get as loss to his estate. So, we award Rs. 39,000/- under the head "medical expenses". In view of the decision cited supra, the appellants are entitled to get compensation for the pain suffered by the deceased also. We award Rs. 20,000/- under the head "pain and suffering" and Rs. 10,000/- under the head "loss of amenities in life suffered by the deceased. In all, the appellants will be entitled to get Rs. 86,000/- as compensation for the injuries sustained by the deceased Remesh, which would devolve on the appellants as his legal heirs, which the 3rd respondent Insurance Company is liable to pay with 9% interest from the date of the petition till payment. Two months" time is granted to the Insurance Company to deposit this amount as well.

With the above modification of the impugned award of the Tribunal, this appeal is disposed of.