
(2013) 10 KL CK 0074
In the High Court Of Kerala
Case No : M.A.C.A. No. 896 of 2008

Kadeeja and Others

APPELLANT

Vs

Managing Director, KSRTC, Tvm and Another

RESPONDENT

Date of Decision : 18-10-2013

Acts Referred:

Citation : (2014) 1 ACC 718 : (2014) 1 ILR (Ker) 107 : (2013) 4 KHC 487 : (2013) 4 KLJ 682 : (2013) 4 KLT 683

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

Bench : Division Bench

Advocate : T.N. Manoj, for the Appellant; Babu Joseph Kuruvathazha, Joy George, V.V. Nandagopal Nambiar, K. Prabhakaran, Standing Counsels, KSRTC and N.K. Karnis, for the Respondent

Judgement

K. Ramakrishnan, J.—The claimants in OP (MV) No. 970/2001 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda, are the appellants herein. The appellants are the brothers and sisters of deceased Jamal, who died in a motor vehicle accident, caused on account of the rash and negligent driving of the vehicle by the 2nd respondent, owned by the first respondent corporation. The claim was filed by the appellants u/s 163A of the Motor Vehicles Act. The Tribunal found that the accident occurred due to the negligence of the vehicle by the 2nd respondent. Though, the claim was filed originally u/s 166 of the Motor Vehicles Act, subsequently, the same was converted into a claim under 163A of the Act. The Tribunal took the monthly income of the deceased as Rs. 2,000/- per month, and finding that the appellants are not the dependants of the deceased, deducted 2/3rd from the income of the deceased and awarded a total compensation of Rs. 1,08,500/- as follows:

Dissatisfied with the quantum of compensation awarded, the appellants have come up before this Court with the above appeal.

We have heard the learned counsel for the appellants and counsel for the respondents.

2. The counsel for the appellants submitted that, in the case of a claim u/s 163A of the Act, the Tribunal was not expected to calculate the compensation payable on the basis of the dependency of the claimants. Once the death is proved to be due to the user of the vehicle, then the Tribunal need only consider the age of the deceased and the income of the deceased and apply the 2nd schedule provided under the Act for the purpose of calculating the compensation, from which 1/3rd has to be deducted for the personal expenses of the deceased and add the conventional amount of Rs. 2,000/- under the head funeral expenses and Rs. 2,500/- under the head loss of estate are to be added. So, the method of calculation adopted by the Tribunal was erroneous and the appellants are entitled to get compensation as provided under the 2nd schedule.

3. On the other hand, the counsel for the respondents submitted that the appellants are the major siblings of the deceased and they cannot be termed as dependants and as such, the Tribunal was perfectly justified in awarding the compensation after deducting 2/3rd for the personal expenses of the deceased. The total amount awarded, considering these aspects, is just and proper and there is no need to interfere with the amount awarded by the Tribunal is the contention of the respondents.

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

5. Sections 163A and 166 of Motor Vehicles Act read as follows:

163A. Special provisions as to payment of compensation on structured formula basis.--(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.--For the purpose of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

166. Application for compensation.--(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made--

- (a) by the person who has sustained the injury; or
- (b) by the owner of the property; or
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) xxxx xxxx xxxx

[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act.]

6. u/s 163A, the persons who are entitled to apply for compensation are the legal heirs, in the case of death of a person and in the case of injury, the victim. Once a claim is made u/s 166 of the Motor Vehicles Act, then application for compensation can be filed by the persons enumerated in the section, namely the person who sustained injury, by the owner of the property, where the death has resulted from the accident, by all or any of the legal representatives of the deceased, or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. There is wide difference in the words used in both the sections regarding the persons entitled to apply for compensation in the case of death of a person, who died in a motor vehicle accident. u/s 166, in the case of death, the persons entitled to claim compensation are the legal representatives of the deceased. But in the case of a claim u/s 163A, the persons entitled to claim compensation are the legal heirs. Further, in the case of 166, even if, a person is not a legal heir, if he is able to prove that, he/she is a dependant of the deceased, then irrespective of the fact, whether he/she is a legal heir or not, is entitled to claim compensation, in proportion to the extent of dependency claimed by him/her. In such cases, the

dependency will have some relevance for the purpose of assessing compensation. But for a claim u/s 163A, the dependency has no relevancy, because the persons who are entitled to file an application for compensation for the death of the deceased are the legal heirs and not the legal representatives. Once it is proved by the appellants that, they are legal heirs of the deceased then, in a claim u/s 163A, they are entitled to claim compensation for the death of the deceased. Legal representatives include legal heirs as well and not vice versa.

7. Further, in a claim u/s 163A for death, the Tribunal even need not go into the question, as to the selection of multiplier. Once it is proved that death occurred on account of the use of the motor vehicle, the legal heirs are entitled to claim compensation, as provided under the 2nd Schedule to the Motor Vehicles Act, which is based on only two factors, namely, the age of the deceased and the annual income of the deceased. In such a case, the amount provided corresponding to the age and income of the deceased, after deducting 1/3rd for the personal expenses is the compensation for loss of dependency payable to the legal heirs. This was so held in the decision reported in Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, Baroda. So, the method of calculation adopted by the Tribunal deducting 2/3rd for personal expenses and adopting 13 as multiplier for awarding compensation under the head loss of dependency on a consideration of the extent of dependency is unsustainable in law and the same is liable to be set aside. In this case, the deceased was aged 24 years and the Tribunal has taken his annual income as Rs. 24,000/-. The amount provided in the second schedule, corresponding to the said annual income is Rs. 4,56,000/-, from which 1/3rd has to be deducted for the personal expenses of the deceased to arrive at the loss of dependency of the appellant, which will come to Rs. 3,04,000/- instead of Rs. 1,04,000/-. The conventional amount of Rs. 2,000/- for funeral expenses and Rs. 2,500/- for loss of estate as provided in the second schedule are to be added to this amount to arrive at the total compensation payable. So the appellants will be entitled to get a total compensation of Rs. 3,08,500/- instead of Rs. 1,08,500/- awarded by the Tribunal. As such, the appellants are entitled to get an additional compensation of Rs. 2,00,000/-, over and above what has been awarded by the Tribunal, which the first respondent Corporation is liable to pay with 9% interest per annum from the date of the claim petition, till date of payment. Two months' time is granted to the first respondent to deposit this amount as well.

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