(2018) 03 KL CK 0026

In the High Court Of Kerala

Case No : Motor Accident Claims Appeal No. 4119 Of 2017

Kamarunissa And Ors @APPELLANT@Hash New India Insurance Company Ltd

Date of Decision : 01-03-2018

Acts Referred:

Citation : (2018) 03 KL CK 0026

Hon'ble Judges : P.D. Rajan, J

Bench : Single Bench

Advocate : Baby Mathew, P.Jayasankar, A.A.Ziyad Rahman

Final Decision : Disposed Off

Judgement

1. This appeal is preferred against the award in O.P (MV) No.676/2015 of the Addl. Motor Accidents Claims Tribunal-II, Palakkad by the dependents of deceased Aisha Beebi. On 26.11.2014 at 5.00 pm, the deceased met with an accident and she succumbed to the injuries on the same day. The learned Tribunal awarded compensation of Rs.2,42,000/- with interest and cost. Being dissatisfied by that amount, the legal heirs and dependents of the deceased preferred this appeal.

2. The learned counsel appearing for the appellants contended that meagre amount was awarded for pain and suffering and love and affection. She was earning Rs.10,000/- per month but the Tribunal has taken Rs.3,000/- as the monthly income. Appellants are entitled to get enhanced rate of compensation.

3. The learned counsel appearing for the insurer admitted that just amount was awarded by the Tribunal and no interference is necessary.

4. Apex court in National Insurance Company V. Pranay Sethi [2017 (4) KLT 662 (SC)] held as follows:

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santhosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

5. Apex court in Sarla Verma v. Delhi Transport Corporation (AIR 2009 SC 3104) held that, the dependents and the legal representatives of the deceased are entitled to get just amount as compensation. This view was earlier stated in U.P. State Road Transport Corporation v. Trilok Chandra [1996 (2) KLT 2018 (SC)] and General Manager, Kerala State Transport Corporation v. Susamma Thomas [1994 (1) KLT 67 (SC)]. The deceased was 65 years at the time of accident. Even though the appellants contended that the deceased was earning Rs.10,000/- per month, no evidence has been adduced by the appellants to prove the income. Hence Tribunal took Rs.4,500/- as her monthly income.

6. The appellant Nos.1 to 5 are the major children of the deceased and 6 and 7 are the wife and minor son of her predeceased husband Seid Muhammed. Then 1/5 has to be deducted and appellants are entitled to get Rs.2,16,000/-

(Rs.4,500x12x5x4/5) for loss of dependency, but no amount was awarded for loss of dependency. The award of Rs.10,000/- for transport to hospital, Rs.2,000/- for damage to clothing and Rs.25,000/- for love and affection are confirmed. In view of the decision in National Insurance Company V. Pranay Sethi [2017 (4) KLT 662 (SC)], Rs.15,000/- is awarded for funeral expense and Rs.15,000/- for loss of estate. The award amount of Rs.1,80,000/- for loss of estate is set side. Therefore, the total award amount is modified as Rs.2,83,000/- (Rs.2,16,000+10,000+25,000+2,000+30,000). The learned Tribunal awarded compensation of Rs.2,42,000/-. The balance amount of Rs.41,000/- (Rs.2,83,000-2,42,000) is granted as additional compensation.

7. Hence, in addition to the award of Rs.2,42,000/-, the appellants are entitled to get an additional compensation of Rs.41,000/- with 9% interest and proportionate cost. The insurer is directed to satisfy the award within 30 days from the date of receipt of a copy of this judgment, failing which it will carry 12% interest from the date of default.

This appeal is disposed of, accordingly.