Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 29/08/2026

(2013) 09 KL CK 0045

In the High Court Of Kerala

Case No : MACA No. 1007 of 2007

Khadeeja and Others — APPELLANT

Vs

Jaisy Emmanuel and The Oriental Insurance Com. Ltd. — RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 09 KL CK 0045

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

Bench : Division Bench

Advocate : A.V.M. Salahudin, for the Appellant; George Cherian (Thiruvalla), SC for R2, for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—The claimants in O.P. (M.V.) No. 3645/2002 on the file of the Motor Accidents Claims Tribunal, Kozhikode, are the appellants herein. The appellants who are the wife and children of late Abdul Khader, who died in a motor vehicle accident caused on account of the rash and negligent driving of the vehicle owned and driven by the 1st respondent and insured with the 2nd respondent, filed the application for compensation for the death of their breadwinner. After considering the evidence on record, the Tribunal found that since there were two vehicles involved, both the drivers of the vehicles were responsible for the accident and assessed the total compensation of Rs. 74,000/- and since only one vehicle''s owner and insurer have been made parties, awarded only 50% of the compensation making respondents 1 and 2 liable to pay that amount to the claimants. Aggrieved by the finding regarding the negligence and also quantum of compensation awarded, the appellants have come before this Court with the above appeal. Heard the learned counsel for the appellants and the learned counsel for the insurance company.

2. The learned counsel for the appellants submitted that the deceased was walking along the side of the road and he had not contributed anything to the accident. Further, the car belonging to the 1st respondent and insured with the

2nd respondent came in a rash and negligent manner and hit against the autorickshaw, which was stationary there and caused injuries to both the deceased as well as the driver of the autorickshaw and thereby there is no negligence on the part of the driver of the autorickshaw. So the Tribunal was not justified in holding that both the drivers were negligent and apportioning negligence between the drivers of both the vehicles involved in the accident. Further, the deceased was a business man and getting Rs. 10,000/- per month. But the Tribunal has only fixed Rs. 15,000/- per annum as his income, which is also on the lower side. He died after nearly one month after the accident. The amount awarded for pain and suffering, loss of consortium etc. are also on the lower side. So, according to the learned counsel for the appellants, the appellants are entitled to enhancement on all heads.

3. On the other hand, the learned counsel for the insurance company submitted that even as per the allegations in the first information statement, the injured had a case that the autorickshaw had suddenly applied break and on account of that the Maruti car, which came from behind hit the autorickshaw and resulted in the accident. So it cannot be said that there was no negligence on the part of the driver of the autorickshaw. So the Tribunal was perfectly justified in apportioning the negligence between the drivers of both the vehicles. That finding does not call for any interference. Further, considering the age of the deceased, the amount awarded by the Tribunal is also just and proper and no interference is called for at the hands of this Court.

4. We have considered the contentions of both parties.

5. It is true that the appellants have impleaded only the owner cum driver and insurer of the car involved in the accident. It is also seen from Ext. A1 FIR registered in respect of the accident, that a case was registered against the driver of the autorickshaw, which hit the deceased. But, a reading of the gist of the allegations in the first information statement narrated in the first information report will go to show that the autorickshaw was proceeding ahead of the car and allegation was that since the autorickshaw had suddenly applied break, the car which came from behind hit the autorickshaw, which in turn, hit the deceased and resulted in the accident. But it may be mentioned here that a car which is following another vehicle is expected to keep a safe distance and if the driver of the car had kept a safe distance, then the accident could have been avoided. In this case, from the allegations in the first information statement itself, it will be seen that the car driver was negligent and not the autorickshaw driver. The autorickshaw driver was implicated only because it was the vehicle which hit the deceased. So under the circumstances, the finding of the court below that the accident occurred due to the negligence of both drivers of the vehicles involved in the accident on the presumption that two vehicles involved in the accident is unsustainable in law and that finding is liable to be set aside. We set aside the same and we hold that the accident occurred due to the negligent driving of the car by the 1st respondent, who is the owner of the vehicle as well.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/khadeeja-and-others-appellant-hash…

6. As regards the monthly income of the deceased is concerned, no document has been produced by the appellants to prove his income. But the accident occurred on 13.9.2002. Considering the costs of living and also status of the parties during that period, it cannot be said that the deceased will be getting only notional income of Rs. 15,000/- per annum, which was fixed by the Legislature in the year 1994. So we enhance the monthly income as Rs. 2,000/- per month. If Rs. 2000/- is taken as the monthly income, then the appellants will be entitled to get Rs. 80,000/- (Rs. 2000 x 12 x 5 x 2/3) under the head, loss of dependency instead of Rs. 50,000/- awarded by the Tribunal.

7. It is seen from the records that though the accident occurred on 13.9.2002, the injured died only on 17.10.2002 while he was undergoing treatment at Medical College Hospital, Alappuzha. He was first admitted in Medical College Hospital, Kozhikode and thereafter shifted to Medical College Hospital, Alappuzha. So, considering this fact, the amount awarded under the head, pain and suffering suffered by the deceased is also on the lower side. So we enhance the same to Rs. 20,000/- under the head, pain and sufferings, instead of Rs. 10,000/- awarded by the Tribunal. Further, the deceased was aged 70 years old. The 1st appellant was aged 64 years at the time of death of her husband. At this old age, she had lost support of her husband. Parting with the partner at old age is more painful. So the amount awarded under the head, loss of consortium also appears to be on the lower side and we enhance the same to Rs. 15,000/- from Rs. 5,000/- awarded by the Tribunal. We do not find any reason to interfere with the amounts awarded by the Tribunal under the other heads as the amounts awarded by the Tribunal under the other heads are just and proper. In all, the appellants will be entitled to get a total compensation of Rs. 1,24,000/- including the compensation awarded by the Tribunal. (Rs. 74000/- awarded by the Tribunal + additional compensation of Rs. 50,000/- awarded by this Court). So, the appellants will be entitled to get the 50% deducted by the Tribunal also towards compensation payable to the appellants. Over and above the compensation awarded by the Tribunal, the appellants are entitled to get Rs. 50,000/- more, which the 2nd respondent insurance company is liable to pay with 9% interest from the date of petition till date of payment. This amount is liable to be paid to the 1st appellant, who is the wife of the deceased. So the insurance company is directed to deposit this amount and also the balance amount of 50% deducted by the Tribunal with interest at the rate awarded by the Tribunal from the date of petition till payment within two months from today.

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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/khadeeja-and-others-appellant-hash…