
(1989) 10 KL CK 0011
In the High Court Of Kerala
Case No : M.F.A. No. 287 of 1984

K.S.R.T. Corporation

APPELLANT

Vs

Padmanabhan Nair and Another

RESPONDENT

Date of Decision : 30-10-1989

Acts Referred:

Citation : (1989) 10 KL CK 0011

Hon'ble Judges : Ramakrishnan, J; Radhakrishna Menon, J

Bench : Division Bench

Advocate : P. Gopalakrishnan Nair, for the Appellant; James Vincent, for Respondents 1 and 2, for the Respondent

Judgement

Radhakrishna Menon, J.—The Kerala State Road Transport Corporation, the first Respondent in O.P. (M.V.) No. 348/1981 before the M.A.C.T., Ernakulam, is the Appellant.

2. The award is under challenge. The Tribunal has decreed a sum of Rs. 24,000 as damages with interest at 6 per cent from 15th May 1981 till realisation and cost.

3. Respondents 1 and 2 are the parents of Ajay Kumar alias Rajan who died in a motor accident which occurred at 00.45 A.M. at Pettah near Thripunithura on 16th November 1980. The deceased at the time of his death was 21 and was a waiter in the Malabar House on the Market Road. At the time of his death he was getting Rs. 300 as salary per month excluding his expenses and tips. The parents claimed a sum of Rs. 50,000 as compensation for loss of dependency and damages to clothing and articles.

4. The Tribunal after evaluating the evidence has found that the accident was due to the rash and negligent driving of the second Respondent. The Tribunal has fixed the multiplicand at Rs. 2,400 and the multiplier at 10.

5. The learned Counsel for the Appellant argued that the finding of the Tribunal

that the accident was due to the negligent driving of the driver of the bus was liable to be vacated because the evidence would show that negligence could be attributed to the victim also. That this argument is without substance can be seen from the evidence available on record. The evidence relied on by the Tribunal in our view establishes beyond doubt that it was due to the rash and negligent driving of the driver of the bus, the accident occurred. The above argument therefore is rejected.

6. We should have dismissed the appeal under the circumstances. But it has become necessary to go into the merits of the case, because Respondents 1 and 2 have filed a cross-objection. According to the learned Counsel for Respondents 1 and 2 the Tribunal without taking into account the expectancy of the life of the deceased has arbitrarily fixed the multiplier at 10. As already noted the deceased at the time of death was only 21. The father was aged 51 and the mother 48. The dependents in the circumstances could have had the benefits of the earning of the deceased at least for 20 years, the learned Counsel for the Respondents argues. Regarding the age of the deceased as also the parents discernible from the records, there is no dispute. If that be the position, the life expectancy of the Respondents which is shorter when compared to the life expectancy of the deceased requires to be taken into account in fixing the multiplier. That that is the principle that should be adopted has been held by the Supreme Court in *C.K. Subramania Iyer and Others Vs. T. Kunhikuttan Nair and Others*, This however, is only one of the relevant factors that will be taken into account in fixing the damages. Taking into account the facts and peculiar circumstances of the case, we are of opinion that the multiplier can be fixed at 15. On a perusal of the records, we are of the view that the Tribunal has correctly fixed the multiplicand at Rs. 2,400. That means, the finding of the Tribunal that the multiplicand can be fixed at Rs. 2,400 is to be taken as reasonable and the damages can be calculated on that basis.

7. In the light of the above discussion, the dependents, that is Respondents 1 and 2 are entitled to get a sum of Rs. 36,000 instead of Rs. 24,000 fixed by the Tribunal, as damages.

8. There is yet another question arising for consideration and it is this: whether Respondents 1 and 2 are entitled to get the conventional compensation for the pain and suffering of the deceased and loss of enjoyments of life. The counsel for Respondents 1 and 2 argues that this claim is an allowable one because this will be a loss to the estate of the deceased which, ordinarily devolves on the dependants. As to how the compensation under this head could be assessed, there is no proper guideline except those suggested by some pronouncements of the High Courts and the Apex Court. Respondents 1 and 2 have not laid any specific claim under this head although Ground 7 in memo of cross-objection deals with it. Considering such claims, the Supreme Court in *N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another*, has observed thus.

...Therefore the amount of Rs. 5,000 which the High Court held inadmissible, is legitimately admissible under Anr. head and therefore by changing the head we restore the amount of Rs. 5,000 awarded by the Tribunal.

The above claim was in respect of the claim falling under the head mental agony suffered by the claimants as a result of the death of the deceased. The compensation awarded by the Tribunal according to the High Court, was not sustainable. Commenting upon this view of the High Court, the Supreme Court observed that "this is only the different way of looking at the same thing which is legally permissible." The Supreme Court accordingly held that this claim can be justified under some other head. It is relevant in this context to note the following observations of this Court in *Kelappan v. Vijayan* 1986 KLT 874 also.

No technicality can stand in the way of this amount being awarded. A sum of money could be awarded as compensation, though not under the head claimed but under Anr. head. That this is a legitimate exercise is recognised by the Supreme Court in *N. Sivammal v. The Managing Director, Pandian Roadways Corporation and Anr.*

Keeping this principle in view, let us consider whether the claim under the above head is admissible. It should in this connection be remembered that Courts have recognised such a claim, as the one on hand, in every case relating to the death of a person in a motor accident. What we generally see is that the Tribunals are not awarding any amount towards non-pecuniary damages in cases of fatal accidents whether the victim dies instantaneously or the victim dies sometime after the accident. That is not a proper approach according to the Supreme Court. We shall in this connection refer to the ruling of the Supreme Court in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, where the Supreme Court has observed that the damages for loss of the dependency as well as loss to the estate require to be computed and awarded separately. We may in this connection refer to a decision of the Andhra Pradesh High Court reported in *Y. Varalakshmi v. M. Nageswara Rao* 1988 A.G. 354. The Andhra Pradesh High Court after elaborately considering the various aspects of this point has declared that compensation under this head shall be awarded whether the death was instantaneous or after few days of the accident. With respect, we agree with the said view. How to determine compensation under this head in our view is a complex question. That perhaps may be the reason, as is seen from the judicial pronouncements: this payment is made as a conventional customary payment. Considering an identical question, this Court in *P. Pappammal v. International Space Research Organisation and Ors.* L.I.R. 1986 (1) Ker 252 has held that a customary figure of Rs. 5,000 can be fixed loss to the estate. A sum of Rs. 5,000 therefore can be awarded as customary figure for loss to the estate of the deceased in this case. To sum up, the compensation for loss of dependency is fixed at Rs. 36,000 and the customary compensation at Rs. 5,000 Respondents 1 and 2 therefore are entitled to get a sum of Rs. 41,000 as compensation with interest at 12 per cent from the date of the application till realisation. The

Appellant is only liable to pay an additional interest of 6 per cent on the amount already deposited and withdrawn by the Respondents for the period, from the date of the filing of petition till the date of deposit.

The appeal is dismissed, whereas the cross-objection is allowed to the extent indicated above. In every other respect, the award is sustained.