

(1990) 07 KL CK 0062

In the High Court Of Kerala

Case No : M.F.A. No. 844 of 1989 and Cross Objection

K.S.R.T.C.

APPELLANT

Vs

P.J. John and others

RESPONDENT

Date of Decision : 20-07-1990

Acts Referred:

Citation : (1990) 2 KLJ 476

Hon'ble Judges : Varghese Kalliath, J;T.V. Ramakrishnan, J

Bench : Division Bench

**Advocate : P. Gopalakrishnan Nair and D. Somasundaram, for the Appellant;
K.T. Sankaran and P.V. Narayanan Nambiar, for the Respondent**

Final Decision : Dismissed

Judgement

Varghese Kalliath, J.—Kerala State Road Transport Corporation is the appellant. Appeal is against the award in O.P. (MV) No. 540 of 1987. The Motor Accidents Claims Tribunal, after considering the evidence and circumstances revealed in the case, awarded an amount of Rs. 2,80,950/- together with interest at 12% per annum from 9-7-1987 till the date of realisation and proportionate costs. This amount was directed to be paid by the appellant herein, the second respondent in O.P. (MV) No. 540 of 1987. Two questions arise for consideration in this appeal. Appellant submitted that the award is not justifiable for the simple reason that the Tribunal's finding that the driver of the appellant's vehicle was negligent, is incorrect. The second contention is that the Tribunal has grievously erred in fixing the quantum of damages. It is submitted that it is not only arbitrary but also unreasonable. We have to consider the above two questions on the facts and circumstances of the case. These are the facts.

2. Petitioners in the O.P. are the father mother widow and children of deceased Joseph John. Joseph John is the son of the first petitioner and the second petitioner. Third petitioner is the widow of Joseph John and the 4th and 5th petitioners are the minor children of Joseph John. Joseph John met with a fatal accident on 28-3-1987.

3. The unfortunate event took place at Kaduthuruthy. Joseph John was riding a scooter and was coming from north to south. P.W. 1 was seated on the pillion of the scooter. When he reached Kaduthuruthy, an Express Bus of the appellant KLX 4944 proceeding to Madurai from Ernakulam was stopped at Kaduthuruthy Bus Stop. The second respondent in O.P. was driving the Express Bus, The bus was stopped at Kaduthuruthy for passengers to alight and get in. A private bus by name "Nithish" was stopped on the right side of the road. There was some space in between the two buses. A person was talking with driver of the private bus standing in between the two buses. When the private bus moved, the person who was talking with the driver suddenly moved back and receded to the centre of the road. At that time, the deceased riding the scooter reached that spot. The person as well as the driver of the scooter and the pillion rider fell down. At that time, the Express Bus moved forward and the deceased who was trying to help himself to stand up was hit by the K.S.R.T.C. Bus. The deceased was hit by the rear side of the bus. The rear wheel run over the deceased. Deceased sustained serious injuries, and succumbed to those injuries.

4. Appellant contended that there was no negligence on the part of the driver of the vehicle KLX 4944. It is contended that the accident occurred when the man who was driving the scooter hit a person who was standing on the western side of the road. According to the appellant, if at all, anybody was negligent, it was the person who was driving the scooter, who hit a person who was talking with the driver of the private bus that was stopped on the western side of the road.

5. As we said earlier, we have to decide the question as to the fact whether the driver of the appellant was negligent or not. There is evidence of P. Ws. 1 to 3 to the effect that the K.S.R.T.C. Bus was stopped on the eastern side of the road about 100 ft. north of the place of the accident and a private bus was parked on the western side of the place of the accident. From the evidence, it is clear that the deceased was riding a scooter and was coming from north to south. P.W. 1 was seated on the pillion of the scooter. His evidence shows that when the scooter came near the private bus, the person who was talking with the driver of the private bus moved backward and hit the scooter and the impact of the hit resulted in the falling of the scooter and both the persons on the scooter. At that point of time, the driver of the K.S.R.T.C. Bus moved the bus and took speed. The rider of the scooter was trying to get up from the road. The deceased who was helping himself to get up, was knocked down by the K.S.R.T.C. Bus. This happened because the driver saw the deceased lying on the road, and so he swerved the bus to the east. In that process, the rear side of the bus struck on the left side of the deceased. The evidence of P. W. 2 is that the driver was looking backward to see the conductor giving signal to move the bus. This fact is corroborated by the evidence of P. Ws. 3 and 4 who stated that the second respondent was not looking forward and if he had looked forward, he could have seen the injured lying on the road.

6. A crucial fact that has to be decided in this case is to determine whether the

driver of the K.S.R.T.C. Bus had opportunity to see the scooter and its driver before he moved the bus. This point has to be decided on the basis of the distance between the two buses. The distance between the two buses is important in so far as that alone will give an indication whether there was an opportunity for the driver of the K.S.R.T.C. Bus to avoid the accident. The evidence is that K.S.R.T.C. Bus was stopped on the eastern side of the road about 100ft. north of the place of the accident. The accident took place close to the place where the private bus was parked. If there was 100ft. distance between the two buses, we cannot attribute negligence on the part of the scooter driver riding the scooter in between the two buses. Further, if the fact that there was 100 ft. distance between the two buses is correct, there is possibility for the driver of the K.S.R.T.C. Bus to see the hitting of the scooter against the person who was talking to the driver of the private bus and the capsizing of the scooter and the falling of the person riding the scooter. As regards the question whether there was 100ft. distance between the two buses, the evidence of the driver R.W. 1 is correct. He himself says:-

For the further question, he answered:-

7. There is definite suggestion that the driver swerved the bus to the east, though that suggestion has been denied by the driver of the K.S.R.T.C. Bus. The appellant contended that if the driver was negligent in moving the bus forward with great speed, there is no possibility of the rear wheel or the rear side hitting the deceased person. Apparently, this is an attractive argument. But, on a closer scrutiny of the evidence and circumstances involved in the case it is possible to understand what has really happened on that unfortunate "the cat jumps" occasion. It cannot be said that the driver of the appellant's bus made an in vain attempt to avoid the running of the front wheel over the deceased. In that attempt, he might have swerved the bus to the east and that must be the reason for hitting the back side of the bus on the deceased. The evidence on the whole suggests this as the sequence of the accident. The Tribunal found that the driver of the K.S.R.T.C. Bus was negligent and that caused the fatal accident.

8. We do not find any reason to disagree with the finding of the Tribunal. We hold that the finding is legally correct on the basis of the evidence adduced in the case. If the appellant's driver is negligent, the appellant is vicariously liable to pay compensation to the legal heirs of the deceased. Now, the only question that has to be decided is the question of the quantum of compensation.

9. Petitioners in the O.P. have claimed an amount of Rs. 3,51,000/- as compensation. As we said earlier, the Tribunal has awarded a total compensation of Rs. 2,80,950/-. We have to examine the legality and reasonableness of the determination of the compensation.

10. The deceased was aged 32 years at the time of his tragic death. He was employed in a Co-operative Bank. He was earning an income of Rs. 1,598/- per month. Ext. A1 is the salary certificate. It is also proved that the age of

retirement is 58. So, he had 26 years of service. Under different heads, compensation was claimed.

11. An amount of Rs. 250/- was claimed for transportation of the dead body. The Tribunal found that it is reasonable and awarded, the said amount. Counsel did not very seriously challenge that finding of the Tribunal. We feel, he rightly did not challenge this finding of the Tribunal. The Tribunal awarded Rs. 700/- for the loss of clothing and watch. It is also reasonable and no interference is possible by this court with that finding of the Tribunal. An amount of Rs. 10,000, was demanded for funeral expenses. When a man dies on account of natural causes or on account of accident, he has to be buried and the funeral expenses have, to be met by the living. This aspect also has been taken note of by the Tribunal. But, in a case of death, as a result of the accident, it is natural that some unforeseen expenses have to be incurred. Everything has to be arranged with utmost haste, and so, there is nothing wrong in awarding a reasonable amount for the unexpected additional expenses for the arrangements of the funeral on account of the death caused by the accident. The Tribunal, after considering all these aspects, fixed Rs. 4,000/- as compensation for Meeting the funeral expenses. So, though funeral expense is not an item which can be computed for determining the total amount of compensation, in this case, the Tribunal has considered the peculiar nature of the death and awarded an amount of Rs. 4,000/-. It cannot be understood that we are accepting that funeral expense is an item which can be reckoned for the purpose of determining the total amount of compensation. But we do not want to disturb the finding of the Tribunal awarding Rs. 4,000/- as compensation for meeting the funeral expenses.

12. Counsel for the appellant submitted that there is no reliable data to determine compensation for loss of consortium. In this case, the widow has claimed Rs. 26,000/- as compensation for loss of consortium. She has stated that she is not intending to re-marry. When she was examined, she was aged 33 years. The Tribunal awarded Rs. 10,000/- as compensation for loss of consortium stating that it will be only a reasonable amount for compensation for loss of consortium. On this point, counsel submitted that this court should consider the decisions rendered by the Supreme Court and this court and also the reasonableness of the concept of giving a special amount for loss of consortium. He said that it cannot be taken even as a particular head for the purpose of determining the total amount of compensation payable to the wife, on the death of her husband.

13. The English Law has recognised this count of compensation, but made a distinction between husband and wife. In *Beet v. Samuel Fox & Co. Ltd.* (1952) A.C. 716 it was held that a husband has a right of consortium-the comfort and services of his wife-and has a right to damages if wrongfully deprived of it. It is stated that this is an old-fashioned common law right given to the husband only and the wife has no corresponding remedy. We cannot adopt this principle. If the husband has got the right to consortium-the comfort and services of his wife-

there is absolutely, no justification or rationalisation, rhyme or reason for denying that right to wife when she is deprived of the feeling of security, care, comfort and services of the husband. It is a fact that Indian community values very much the devotion, care and attention bestowed by a husband to his wife. In normal circumstances, to become a widow at a young age, is considered to be the greatest misfortune that can be fallen on a young woman. At one time, it was considered by the society to be a course of the God. A widow was treated as a cursed woman and she was even prevented from participating on auspicious occasions. All these we have said to point out that the special personal loss of wife on the deprivation of the life of a husband, apart from the pecuniary loss of dependance for an Indian woman is so great and really unmeasurable.

14. In this aspect, we have to consider the case of married persons. The normal happy life includes a contented sexual relationship. The deprivation of such a happy life can never be compensated and so, there is no point in saying that the wife has no right for compensation for consortium. We cannot think about granting compensation for consortium to husband and denying the same to the wife. That is why we say that we cannot agree with the English principle. Indian courts have without any hesitation, recognised the loss of consortium as a count for determining the compensation payable on the deprivation of the life of the husband. We catalogue some of the decisions.

Abdulkhader Ebrahim Sura v. Kashinath Moreshwar Chandani 1968 ACJ 78 Bom., Oriental Fire and General Insurance Co. v. Chunilal (1969 ACJ 237 (P&H)), State Govt. Insurance Office, Queensland v. Crittenden (1970 ACJ 303 AP), Pijush Kanti Ghosh Vs. Sm. Maya Rani Chatterjee and Others, , Kailash Wati and Another Vs. State of Haryana and Another, , K. Narayana Reddiar Vs. P. Venugopala Reddiar, , C. Venketesham v. General Manager, A.P.S.R.T. Corporation (1977 ACJ 536 A.P.), Khodabhai Bhagwanbhai and Others Vs. Hirji Tapu and Another, , Harimohan Matadin v. Jagannath Prasad Sharma (1982 ACJ (Supp) 40 MP), Srisailam Devastanam Vs. Bhavani Pramillamma and Others, , U. P. State Road Transport Corporation v. Deepti & Others (1985 ACJ 691 All), Farooque & Others v. Municipal Corporation of City of Ahmedabad (1986 ACJ 101 Guj.), National Insurance Co. Ltd. v. Tulsi Devi (1988 (2) ACJ 692 (Raj.), Kaja Trisula Devi and Others v. Naragani Nagaswar Rao & Others (1988 ACJ 974 AP), Latabai & Others v. Rajendra & Others (1988 ACJ 787 (MP), D. Vinoda & Others v. B. Baswa Raju & Others (1988 ACJ 1072 AP), Pandurang Chimaji Agale & another v. New India Life Insurance Co. (1988 ACJ 675 Ori) and Christian Welfare Centre v. Sebastian (1988 ACJ 1058 Ker = (1988 (2) KLT 153).

15. In Velunniv. Vellakutty 1989 (2) KLT 227 this court had occasion to consider this aspect of the matter and spot-lighted a different angle for justifying the claim of compensation for loss of consortium. This Court held thus;-

It is difficult in modern times to rest any principle of law on the supposed proprietary right of the husband over the person of the wife. If the alleged right of a husband is to be conceded the court should also be prepared to concede a

similar right in the wife. Fatal Accidents Act does not make any distinction between rights of husband and wife. The word "injury" is a word of much import. Consortium is perhaps one of the most valuable rights of spouses and when such right is destroyed or impaired, ordinarily it does cause serious and substantial loss to the other spouse. In recognising this principle no distinction can be made between injury to the wife causing loss of consortium to the husband and injury to the husband causing loss of consortium to the wife.

The law of this land recognises conjugal rights to husband and wife. This is recognised by statutory provisions which are made enforceable by decree of the court. The conjugal rights, include rights which a husband or a wife has to the society comfort and affection of the other.

16. Counsel also submitted that in this case, an amount of Rs. 10,000/- was awarded to the third claimant widow as compensation for loss of consortium. Counsel submitted that a conventional amount not more than Rs. 2,000/- is justifiable and at any rate, there is absolutely no justification to award an amount more than Rs. 5,000/-. We do not think that there is any conventional amount in Indian Law in this regard. It has to be remembered that each case has to be decided on the peculiarities and circumstances involved in the case. What are the elements to be considered for determining the appropriate compensation for loss of consortium depends upon the sagacity, discernment and insight of the decision making authority. In short, the decision making authority should be guided by the principle "pursuing the best ends by the best means" (Vide-Francis Hutcheson and "knowledge of things human and causes by which those things are controlled" (Cicero). We feel that we are bound to determine an amount as compensation for loss of consortium following precedents. We know and like to adhere strictly the principle that in hierarchical system of courts, it is necessary for each lower tier to accept loyally the decisions of the higher tier. We must take the guidance after examining the facts of the case at hand whether the amount awarded as compensation for loss of consortium will stand the test of sensibleness, reasonableness, saneness and sobriety. Different courts have awarded different amounts taking into account the peculiarities of the cases came up before those courts. There is no point in saying that compensation for loss of consortium should be a limited amount and that too, cabined and cribbed by convention. Who can create such a convention, otherwise than by legislation. We can understand that in identical and similar conditions, courts have granted a particular amount that can be considered as a guiding precedent to be followed by the court for the purpose of consistency. But, to say that there is a conventional amount of Rs. 5,000/- as compensation for loss of consortium, we feel, is totally unintelligible. We can demonstrate it by referring to certain decisions.

17. The Karnataka High Court in 1982 (Supp. 585) (Basappa v. K. H. Sreenivasa Reddy) awarded Rs. 15,000/- for loss of consortium to a husband for the period till he remarried and for providing care and protection to the minor children of

the deceased. In justifying this award, the court said, the claim was for Rs. 50,000/- There is evidence in the case that by the time, the petition came up for evidence, the husband had re-married. The contention that, therefore, the husband is not entitled to any compensation for loss of consortium was negated. The court said that the deceased has left behind her two minor children. It may be that the husband has got another wife, but, the children cannot have another mother. They would, after all, have a step mother and the treatment by a step-mother has become proverbial in Hindu society. Therefore, it would be necessary for the husband to make arrangements for the proper care and protection of his minor children by engaging the services of at least a maid till the children attain the age of discretion, and found that it would be proper to award a compensation of Rs. 10,000/-.

18. A Division Bench of the Calcutta High Court also considered the question regarding the proper amount to be paid to the wife for loss of consortium on the death of the husband. In the case reported in 1985 ACS 271 (State of West Bengal v. Statish Sharma) the court awarded Rs. 10,000/- as compensation for loss consortium.

19. The Rajasthan High Court also considered the question of compensation for loss of consortium in Phooli Devi and Others Vs. Inderjeet Singh and Others, . In that case, the deceased was aged 26 years. The court applied a multiplier of 34. Enhancing the compensation by Rs. 1,66,000/- the court awarded a total compensation of Rs. 2,04,000/- and the court added an amount of Rs. 15,000/- as compensation for loss of consortium. The Tribunal has awarded only an amount of Rs. 2,500/- a very meagre amount. The court has taken into account the age of the widow-22 years - and said :-

Such unfortunate accidents plunge the widow in sudden darkness. The complexion of her life changes completely. In Hindu society remarriage of a Widow is still treated to be a taboo. In the facts of and circumstances of the case, I therefore, award Rs. 15,000/- as loss consortium.

20. A Division Bench of this Court also considered the question as to the appropriate amount to be awarded as compensation for loss of consortium in Padmanabhan Nair Vs. Narayanikutty and Another, In this case, the widow was aged 35. This court awarded Rs. 7,500/- as compensation for loss of consortium. This court observed thus :-

We also feel that the amount of Rs. 3,000/- fixed as compensation for loss of consortium is too low having regard to the fairly young age of both the claimant and her husband. We will fix the compensation under this head at Rs. 7500/-.

21. In the case at hand, the Tribunal has awarded Rs. 10,000/- as compensation for loss of consortium. We need not say that the unfortunate accident has made the life of the wife, bleak, desolate and bank. By the death of her husband, a sudden darkness dissented on her life, The tone and temper of her life change completely into a traumatic murky twilight. We cannot say that the pecuniary

compensation of Rs. 10,000/- in the circumstances, is Unreasonable. We say that it is only moderate and quite reasonable. There is a claim under the head - loss of love and affection for claimants 3 to 5. They claim Rs. 25,000/- as compensation for the same. The Tribunal, after stating that Rs. 10,000/- is awarded for loss of consortium to the third claimant, fixed Rs. 6,000/- as compensation for loss of love and affection. The minor children are aged 7 years and 4 1/2 years. They lost a loving father. They will not get the paternal affection, love and care and feeling of security-It is a real loss and there is no reason for holding that a compensation of Rs. 6,000/- on this count is unreasonable or unjustifiable. We do not think that there is any ground to disagree with the finding of the Tribunal.

22. An amount of Rs. 20000/- was claimed for pain and suffering of the deceased. It was contended that the deceased had no occasion to suffer any pain since the death was instantaneous. But, P.W. 3, has said that the deceased was taken to the Medical College Hospital, Gandhinagar, and on the way, the injured was groaning. Of course, when he reached the hospital, he was found dead by the doctor who examined him. So, it cannot be said that it is an instantaneous death. The Tribunal has awarded a compensation of only Rs. 5,000/-.

23. In a recent decision of this court in 1990 (1) K.L.J. 489 (K.S.R.T.C. v. Padmanabhan Nair), a Division Bench of this court, relying on a decision of Andhra Pradesh High Court reported in Y. Varalakshmi and Others Vs. M. Nageswara Rao and Others, held that even in cases where the death was instantaneous or after a few days of the accident, a reasonable amount can be awarded for the pain and suffering endured by the deceased. In this case, an amount of Rs. 5,000/- was awarded. We do not see any error in the finding of the Tribunal that the claimants are entitled to Rs. 5,000/- for the pain and suffering of the deceased.

24. Counsel for the appellant submitted that the Tribunal grievously erred in determining the pecuniary loss or account of the death of the deceased. Ext. A1 shows that the monthly income of the deceased was Rs. 1,598/-. The Tribunal deducted 1/4th for his personal expenses. The Tribunal also said that there is no evidence to show that the deceased had any special expenses. The balance amount used for the maintenance of the family was fixed at Rs. 1,199/-. This is found to be the monthly contribution of the deceased. So, the yearly value of the dependency is Rs. 15,388/-. The deceased was aged 32 years. He would have retired on superannuation on completing 58 years. So, the Tribunal, applied a multiplier of 26. Counsel for the appellant submitted that the multiplier used in the case is unjust and this court should not accept that multiplier. He said that the multiplier should be realistic with respect to the age of the deceased as well as the earning period.

25. In Phooli Devi and Others Vs. Inderjeet Singh and Others, , the Rajasthan High Court has applied a multiplier of 34 in the case of a deceased aged 26. The method of assessing damages, particularly, the pecuniary loss is to calculate the

net pecuniary loss upon an annual basis and to arrive at a total award by multiplying the figure assessed as the amount of the annual dependency by a number of year's purchase, that is the number of years the benefit was expected to last. Of course, we have to take into consideration, the imponderable factors in fixing either the multiplier or the multiplicand. The imponderables are the uncertainties of life. When we take into account, the uncertainties of life, we must also take note of the fact of unexpected gains and advantages that may come in the way of the deceased, if he was allowed to live. In this area, the court has to make a reasonable estimate. The court has also to take into account the fact that the compensation is paid as a lump sum amount. A proportionate deduction has to be made for the fact that the compensation is being paid as a lump sum amount. Of course, all these things cannot be determined precisely and with mathematical accuracy. Decisions can only give us guidance in regard to the range and some approximation. But, it is not possible to follow in toto the precedents. We need not repeat that each case has to be decided on its own merits, particularly, in these aspects of the matter.

26. Here, in this case, the multiplier is 26. This multiplier is based on the fact that the deceased was aged 32 at the time of the accident and that he had 26 years of service. Of course, he has to retire at the age of 58. Even after retirement, it cannot be said that he will not contribute anything. He may get pension. Further, even after retirement, he can very well take up any other employment or he can earn by pursuing some other avocation in life. By taking the multiplier as 26, the dependency value comes to more than Rs. 3,80,000/-. It has to be remembered that the claim is only for Rs. 2,50,000/-. The Tribunal has fixed Rs. 2,50,000/- as compensation for loss of dependency. Counsel submitted that the Tribunal has not taken into account in fixing the loss of dependency, the imponderables and also the question of lump sum payment. But it has to be remembered that if the multiplier 26 is justifiable, the claimants are entitled to get Rs. 3,80,000/-. The Tribunal has awarded only Rs. 2,50,000/-. The excess amount of Rs. 1,30,000/- can be adjusted for the imponderables and payment of compensation as a lump sum. We are of the view that the amount awarded by the Tribunal is perfectly justifiable in the circumstances of the case. We see no reason to disagree with the finding recorded by the Tribunal.

27. Counsel submitted that the Tribunal has awarded Rs. 5,000/- for pain and agony suffered by the claimants on account of the sudden death of the deceased. It has to be remembered that the claimants are the parents (father and mother), widow and children of the deceased. We will never say that the claimants have not suffered intense pain and agony when a father and mother lost their son, a wife her devoted husband and two minor children, their loving father. In computing the amount of compensation to be paid, the pain and agony suffered by the claimants are not taken as a count as a general rule.

28. In *N. Sivammal and Others Vs. Managing Director, Pandian Roadways Corporation and Another*, the Supreme Court said that the head mental agony

suffered by the claimants as a result of the death of the deceased cannot be legally sustained. But, the amount awarded was sustained stating that it can be awarded under another head and by changing the head, the Supreme Court has upheld the amount awarded by the Tribunal. No amount has been awarded in this case for the shortening of the life of deceased. This is a valid count. The deceased was aged only 32 years. The Supreme Court has held in some cases that the normal span of life is 70 years. Certainly, the deceased's less of expectancy of life is substantial. The Supreme Court has said that if an award cannot be justified on a particular head, the court is free to change the head, if possible and can justify the award. We feel that an amount of Rs. 5,000/- awarded by the Tribunal as compensation for pain and agony suffered by the claimants can be legitimately put under the head loss of expectation of life of the deceased. This is also an agonising and painful reality for the wife and children. This is a count accepted by all courts. If authority is needed, we quote Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, .

29. Compensation paid for loss of expectation of life is really a compensation paid to the estate of the deceased. To that extent, the estate of the deceased should be augmented. Claimant are the legal heirs who can own the estate of the deceased. We feel that the amount of Rs. 5,000/- awarded by the tribunal for pain and agony of the claimants can be treated as compensation for loss of expectation of the life of the deceased and that also can be justified. In the result, we hold that the award of the Tribunal is perfectly legal and justifiable. We see no merit in this appeal. Appeal is only to be dismissed. We do so.

No serious argument was advanced to substantiate the cross objection filed in this case. It is dismissed.