

(1987) 04 KL CK 0044
In the High Court Of Kerala
Case No : M.F.A. No. 260 of 1982

K.T. Kunharamu and Others

APPELLANT

Vs

General Manager and Others

RESPONDENT

Date of Decision : 03-04-1987

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1987) KLJ 649

Hon'ble Judges : V. Sivaraman Nair, J;M. M. Pareed Pillay, J

Bench : Division Bench

Advocate : P. Ramakrishnan Nair, for the Appellant; M. P. Govindan Nair, for the Respondent

Final Decision : Allowed

Judgement

Pareed Pillay, J.—Appellants are the applicants in M.A.C. 66 of 1981 of the Motor Accidents Claims Tribunal, Manjeri. They filed the petition u/s 110A of the Motor Vehicles Act. The Tribunal rejected the petition holding that they are not entitled to get any amount as compensation. Kunhu Moideen, son of petitioners 1 and 5 and brother of petitioners 2 to 4 died on 21-11-1977 in a motor accident. He was proceeding along Calicut-Malappuram road on a bicycle and it was then that the bus K. R. T. 6075 owned by the first respondent and driven by the second respondent in a rash and negligent manner hit against him and caused him fatal injuries. On the way to the hospital he succumbed to the injuries. He was studying in the S. S. L. C. class. According to the petitioners, the deceased was very intelligent, smart and healthy. They claimed Rs. 50,500/- as compensation.

2. First respondent filed written statement contending that there was no rashness or negligence on the part of the second respondent in driving the bus. It is the case of the respondents that on account of the negligence of the deceased the accident occurred.

3. To prove the negligence on the part of the driver petitioners examined P. Ws. 2

and 3. P.W. 2 has a shop very close to the place of incident. PW. 2 stated that the bus came from Calicut side at very high speed and suddenly hit against Kunhu Moideen. PW. 3 supported the evidence of PW. 2 in all material particulars. The Tribunal on a consideration of the evidence held that there are sufficient materials to hold that the accident occurred as a result of the negligence and rashness on the part of the driver of the bus.

4. Contention of the respondents is that at the time of accident deceased was not earning anything and so on a mere speculative possibility of pecuniary benefit petitioners are not entitled to any amount of compensation. There is no force in the above contention as there is evidence to show that deceased was a bright student at the time of his death. How the deceased would have turned out in life even if it is assumed that he was only of average ability is only at best a guess work. There was reasonable possibility of his becoming successful in life, if PW-1's evidence that he was a bright student is accepted. At any rate, it would not be possible to rule out affirmatively that deceased would not have attained any position in life. In *Taff Vale Railway Company v. Jenkins*(1913 A.C.I) the Judicial Committee observed that it is not a condition precedent to the maintenance of an action under the Fatal Accidents Act, 1846, that the deceased should have been actually earning money or money's worth or contributing to the support of the plaintiff at or before the date of the death provided that the plaintiff had a reasonable expectation of pecuniary benefit from the continuance of the life. Lord Atkinson stated as follows in the above judgment:

I think it has been well established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the existence of this expectation is an inference of fact-there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference can, I think, be drawn from circumstances other than and different from them.

To sustain a claim of compensation u/s 110A of the Motor Vehicles Act it is not at all necessary to establish that the deceased was actually earning money or money's worth or contributing to the support of his parents at the time of accident Parents always reasonably expect to be supported in their old age by their children. The possibility of the deceased becoming successful in life cannot be ruled out. As the parents of the deceased could have reasonably expected pecuniary benefits when the deceased had completed his education and started a career or avocation and as their expectations were shattered asunder due to the unfortunate accident they can very well claim compensation from those persons who were responsible for it. Merely on the ground that the deceased was not actually earning any amount at the time of death, compensation claimed by the

parents cannot be legally denied. It is useful to refer to Mahendra Singh Vs. Smt. Krishna Devi, . In that case a student of 19 years met with death. The parents claimed compensation of Rs. 25,000/-. Though deceased was a student and was not employed the Allahabad High Court took into consideration the fact that the parents could have expected financial assistance at the rate of Rs. 100/- per month and granted compensation.

5. The Tribunal held that no records were produced to show that the deceased was brilliant at his studies. Counsel for the applicants submitted that even if it is assumed that he was only an average student the Tribunal was not at all justified in rejecting the claim of the applicants in its entirety. As there is unassailable evidence that the deceased was studying in the Xth standard when the accident occurred there can only be a conjecture as to what extent he could have given financial assistance to his aged parents had he been alive. Certainly, he would have been in a position to get a job. Even taking into a very moderate estimate we hold that he could have contributed Rs. 150/- per month to his parents. In all probability his parents could have at least obtained from him financial assistance at the rate of Rs. 150/- per month for a period of 15 years. If that be so, the amount of compensation that could be granted to the parents can be quantified at Rs. 27,000/-. Considering the fact that the incident happened a decade ago and that no amount has been paid so far we hold that this is a fit case where no reduction should be made on account of lumpsum payment and uncertainties of life. Taking all facts and circumstances into consideration we hold that petitioners 1 and 5 are entitled to Rs 27,000/- as compensation with 9% interest from the date of petition. The order of the Tribunal is hereby set aside and the petition is allowed to the extent as stated above against respondents 1 and 2. First respondent shall deposit the entire amount before the Tribunal on or before 31-5-1987.

The appeal is allowed. No order as to costs.