

(1988) 08 KL CK 0031
In the High Court Of Kerala

M. Sujatha and Another

APPELLANT

Vs

Kerala State Road Transport Corporation

RESPONDENT

Date of Decision : 11-08-1988

Acts Referred:

Citation : (1990) 2 ACC 40 : (1989) ACJ 925 : (1989) 2 ILR (Ker) 292

Hon'ble Judges : K.S. Paripoornan, J;K.G. Balakrishnan, J

Bench : Division Bench

Judgement

K.S. Paripoornan, J.—These are connected appeals. The compensation payable to the legal heirs of one Madhavan Nadar is the centre of controversy in these appeals. The claimants in O.P.(MV) No. 321 of 1979, Motor Accidents Claims Tribunal, Trivandrum are the appellants in M.F.A. No. 381 of 1983. The first respondent-Corporation in the said claim petition is the appellant in M.F.A. No. 375 of 1984. Both these appeals are preferred against the award passed by the Motor Accidents Claims Tribunal, Trivandrum in O.P. (MV) No. 321 of 1979, dated 6.6.1983. Deceased Madhavan Nadar was a tractor driver in the Agriculture Department. On 10.1.1977, along with two others, he was travelling in the department vehicle, jeep No. KLP 2559, and at Karetty junction of the M.C. Road a fast passenger bus No. KRT 407, belonging to the Kerala State Road Transport Corporation, coming from the opposite direction at a high speed and on the wrong side of the road, hit the jeep and pushed it for about ten feet. Madhavan Nadar sustained very serious injuries in the accident and died on the next day, 11.1.1979, at Medical College Hospital. The claimants stated that Madhavan Nadar died as a result of the injuries sustained in the accident due to the rash and negligent driving of the K.S.R.T.C. bus by the driver of the Corporation. The widow and daughter of deceased Nadar claimed a total compensation of Rs. 2,12,500/- against the Corporation, its driver and against the Department of Agriculture and the driver of the jeep.

2. The first respondent-Corporation contested the claim. It was contended that the bus was not driven at a high speed or rashly and negligently. It was being

driven at a normal speed with care and caution and the jeep driver was responsible for the accident. It was further submitted that the injuries sustained, as stated in the petition, are exaggerated and the damages claimed are excessive and imaginary. After the amendment of the petition, the first respondent filed an additional written statement as well, disputing the claim made.

3. The second respondent-Director of Agriculture-stated that the jeep was driven properly on the correct side of the road and that the bus was running at a very high speed and it was due to the negligence of the driver of the bus that the accident occurred. The third respondent-driver of the jeep-also denied any negligence on his part and contended that the bus was being driven rashly and negligently and it hit the jeep and the accident was solely due to the negligence of the bus driver.

4. The Motor Accidents Claims Tribunal, by its award dated 6.6.1983, held that the accident occurred solely due to the rash and negligent driving of the bus driver of the 1st respondent - Corporation and there was no negligence on the part of the jeep driver. It was further held that the application filed claiming compensation is maintainable. The Tribunal held that deceased Madhavan Nadar was a tractor driver in the Agriculture Department. He was aged 35 at the time of his death. He was drawing a salary of Rs. 468/- plus Rs. 200/- batta per month. He had 20 years of service more, that there was a pay revision with effect from 1.7.1978 and considering the loss of benefit to the family in the context of salary, earned leave surrender benefit, loss of increment, promotion avenues, increased Provident Fund and the interest due thereon, etc., a sum of Rs. 1,91,000/- will be the income. Out of this, 1/3rd was deducted for his personal expenses and 1/6th was deducted for the lump sum payment. In the final result, a sum of Rs. 96, 762/- was awarded as compensation with 6 per cent interest from 7.7.1977 (date of filing the petition) till the date of recovery against the first respondent - Corporation. It was further directed that the amount will be shared by petitioner Nos. 1 and 2 in equal proportion.

5. Dissatisfied with the quantum of compensation awarded, the claimants have come up in appeal as M.F.A. No. 381 of 1983. Aggrieved by the amount of compensation awarded, the Corporation (1st respondent) has come up in appeal as M.F.A. No. 375 of 1984.

6. We heard counsel for the claimants, counsel for the Corporation, the learned Government Pleader and others. Counsel for the claimants contended that the quantum of compensation awarded is low and the Tribunal made deductions twice for personal expenses. This is unjustified. It was also stated that the Tribunal erred in awarding only 6 per cent interest on the amount awarded. Counsel also contended that the Tribunal totally ignored fall in the value of rupee and the overall increase in the avenues of promotion and by ignoring such vital and crucial factors, the amount of compensation has been arrived at a low figure. Counsel for the Corporation contended that the accident resulted due to the

negligence of the jeep driver and no compensation is awardable. It was further contended that even so, the Tribunal was in error in awarding the compensation by adopting the multiplier of 20 and determining the compensation at Rs. 96, 762/-

7. On hearing the rival contentions of the parties, we are of the view that the finding of the Motor Accidents Claims Tribunal, that the accident occurred solely due to the rash and negligent driving of the bus by the driver of the Corporation, is justified on facts. But we are of the view that the approach and conclusion of the Tribunal in determining the compensation at Rs. 96, 762/- is erroneous and deserves interference.

8. The Tribunal relied on the evidence of PW 1 (brother of the first petitioner), PW 3 (co-passenger in the jeep) PW 5 (driver of the jeep) as also PW 4 (Head Constable, who prepared the mahazar-Exh.-A-14), to find that the accident occurred due to the rash and negligent driving of the bus by the driver of the Corporation. We perused through the said depositions and Exh. A-14 mahazar. EXh.-14 shows that the accident occurred on the side of the road, which was the correct side for the jeep and the wrong side for the bus. The road was wide. It is sufficient for two vehicles to pass. The bus driver was convicted as per Exh. A-1 judgment in the criminal case. The above materials provide sufficient and cogent materials to hold that the accident occurred due to the rash and negligent driving of the bus by the driver of the first respondent-Corporation. We repel the plea to the contrary advanced by the counsel for the first respondent-Corporation.

9. The more serious controversy is regarding the quantum of compensation awardable to the claimants. Deceased Madhavan Nadar was a tractor driver in the Agriculture Department. He was aged 35 at the time of his death. The accident took place on 10.1.1977. He was drawing a salary of Rs. 468/- per month. Besides, he was getting a batta of Rs. 200/- per month. There was a pay revision with effect from 1.7.1978. The Tribunal fixed the monthly salary of deceased Madhavan Nadar at Rs. 700/-. An average of Rs. 150/- per month was deducted for his personal expenses. Deceased Nadar had 20 years of service more. A multiplier of 20 was adopted. Besides, different sums were awarded for other perquisites like earned leave surrender benefit, pensionary benefits, loss of promotion avenues, loss of interest on the Provident Fund deposit, loss of gratuity etc. We should state that the Motor Accidents Claims Tribunal is acting as a quasi-judicial authority in determining the award of compensation. It should determine the amount of compensation on the basis of cogent and sufficient materials. It is true that the award of compensation cannot be on a scientific basis or an arithmetical calculation. Imponderables are involved in determining the compensation to be awarded. The future life of the deceased depends upon a host of factors. So also, the future salary benefits that may accrue to the deceased by way of promotion, leave surrender salary, Provident Fund deposit, revision of salary etc. are also beset with various imponderables. There can be no uniform rule for measuring the value of a human life. There can be no precise

calculation on that score. The amount recoverable depends upon the particular facts and circumstances. But, one important factor to be borne in mind is the life expectancy of the deceased or of the beneficiaries, whichever is shorter. The elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily varying from case to case and will be personal to each case.

10. Considered in the above background, we are of the view that normally the compensation due to the legal heirs of the deceased can be determined mainly be referring to the state of events or affairs that were prevalent at the time of the death of the deceased. The future chances of promotion, increment in salary and other perquisites including Provident Fund deposit and interest thereon, promotional avenues etc., cannot be given undue importance or over-emphasised in all cases as also the inflation, fall in the value of rupee and lump sum payments etc.

11. We shall now proceed to determine the compensation awardable to the claimants. Deceased Madhavan Nadar was a tractor driver in the Agricultural Department. At the age of 35, he was drawing a salary of Rs. 468/- plus a batta of Rs. 200/- per month. Deducting Rs. 150/- for his personal expenses, the monthly benefit to the dependants will be Rs. 550/-. It means, Rs. 6, 600/- per year. Deceased Madhavan Nadar had to serve for another 20 years normally. On this basis, a sum of Rs. 1, 32,000/- will be the loss of benefit to the claimants. Deducting 1/6th for the lump sum payment, the compensation that will be due to the claimants will be Rs. 1,10,000/-. We are of the view that the claimants are entitled to the aid sum of Rs. 1,10,000/- with interest at 12 per cent from the date of filing of the petition (7.7.1977) till recovery. We are specifically excluding the imponderables. Just as the increment in salary, future promotion, leave surrender salary, loss of Provident Fund deposit and interest thereon, pensionary benefits etc., are beset with innumerable hypothetical aspects, so also, the fall in the value of rupee, the unpredictability of continued human existence, the hazards to which the human life may be subjected to by the stress and strain of life and the natural calamities that may happen are conjectural to an extent and so excluded from entering the verdict in the award of compensation herein. As stated, the claimants are entitled to Rs. 1,10,000/- with 12 per cent interest from 7.7.1977 (the date of filing of the claim petition) till recovery. A decree to that effect will be passed in favour of the claimants recoverable from the 1st respondent-Corporation. Claimant Nos. 1 and 2 shall share the compensation amount equally. The mother (1st petitioner) as guardian of the second petitioner (minor) will draw the amount due to the 2nd petitioner only on furnishing sufficient security and on the specific undertaking that the amount shall be spent only for the benefit of the minor (2nd petitioner) and if the security is not furnished or the undertaking is not given to that effect, the amount shall be deposited in a nationalised bank for payment to the 2nd petitioner on her attaining majority.

12. The two appeals are disposed of as above. There shall, however, be no order as to costs either before the Tribunal or in this court.