

(2021) 06 KL CK 0350
In the High Court Of Kerala
Case No : MACA NO. 283 Of 2009

M.A.Joseph

APPELLANT

Vs

Director General Of Police Trivandrum

RESPONDENT

Date of Decision : 23-06-2021

Acts Referred:

Motor Vehicles Act, 1988, — Section 166, 168

Citation : (2021) 06 KL CK 0350

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : Jacob Abraham, Kochumol Koduvath, C.K. Prasad

Final Decision : Allowed

Judgement

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C.S.Dias,J",,,

1. The appellants were the petitioners in O.P(MV) No.2156/2005 on the file of the Principal Motor Accident Claims Tribunal, Kozhikode. The",,,

respondents in the appeal were the respondents in the claim petition.,,,

2. The petitioners had filed the claim petition under Section 166 of the Motor Vehicles Act,1988 (for brevity referred to as "Act"), claiming",,,

compensation on account of the death of Smt.Thresiamma (deceased)-- the wife of the 1st appellant and the mother of the appellants 2 to 4.,,,

3. The facts in the claim petition, relevant for the determination of the appeal, are that: on 21.12.2004 while the deceased was walking along the",,,

Malaparamba road Kozhikode, a vehicle bearing Reg.No.KL-01AD-4952 (offending vehicle) belonging to the 1st respondent hit the deceased. She",,,

was taken to a nearby hospital and underwent treatment till 25.12.2004 when

she breathed her last. The deceased was a house wife and aged 65,,, years. The appellants were the dependents of the deceased and hence they were entitled for compensation. The 2nd respondent was the insurer of,,, the offending vehicle. The appellants quantified the compensation at Rs.2,07,500/- which they limited to Rs.1,50,000/-.",,, 4. The 2nd respondent - the Insurance Company of the offending vehicle â?" filed a written statement, inter alia, admitting that the offending vehicle",,, was insured by it. However, it was contended that the accident occurred due to the negligence of the deceased.",,, 5. The petitioners produced and marked Exts. A1 to A3 in evidence.,,,, 6. The Tribunal, after analysing the pleadings and materials on record, by the impugned award allowed the claim petition, in part, by directing the 2nd",,,, respondent to pay a compensation of Rs.68,000/- with interest at the rate of 7% per annum from 20.9.2005 and costs of Rs.1,000/-.",,, 7. Dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioners are in appeal.",,, 8. Heard the learned counsel appearing for the appellants and the learned Government Pleader appearing for the respondents.,,,, 9. The sole question that emanates for consideration in the appeal is whether the quantum of compensation awarded by the Tribunal is reasonable and,,, just?,,, 10. A Constitution Bench of the Hon'ble Supreme Court in National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680], has held that",,,, Section 168 of the Motor Vehicles Act, 1988, deals with the concept of 'just compensation' and the same has to be determined on the foundation of",,,, fairness, reasonableness and equitability on acceptable legal standards. The conception of 'just compensation' has to be viewed through the prism of",,,, fairness, reasonableness and non-violation of the principle of equitability.",,, 11. Ext.A1 F.I.R substantiates that the accident occurred solely due to the negligence on the part of the driver of the offending vehicle. Admittedly,",,, the vehicle was owned by the 1st respondent and insured with the 2nd respondent. The respondents have not let in any contra evidence to discredit the,,, assertions in the claim petition . Therefore, it stands proved that the accident occurred solely due to the negligence on the part of the driver of the",,,

offending vehicle. Ext.A2 also proves that the deceased expired on 25.12.2004 as a result of the accident. Hence, it is proved that the deceased lost",,,

her life as a result of the accident ,,,,

Notional income,,,

12. The main area of dispute with regard to the notional income of the deceased. Even though the appellants had claimed that the deceased was a,,,

homemaker and had a notional income of Rs.5,000/- per month, the Tribunal fixed the notional income of the deceased at Rs.15,000/- per year, i.e.,",,,

Rs.1,250/- per month." ,,,

13. The Hon'ble Supreme Court in Rajendra Singh v. National Insurance Co. Ltd. [2020 (4) KLT 6 (SC)] has held that the notional income of a,,,

homemaker is to be fixed at Rs.5,000/- per month." ,,,

14. Taking into consideration the fact that the accident occurred in the year 2004, I am of the firm opinion that the deceased's notional income can",,,

safely be fixed at Rs.3,500/- per month. Accordingly, I fix the notional income of the deceased at Rs.3,500/- per month." ,,,

Dependency,,,

15. The appellants had produced Ext.A3 family membership certificate to prove that they were the legal heirs of the deceased. It is evident from the,,,

pleadings in the claim petition that the appellants 2 to 4 were aged 45, 42 and 37 respectively at the time of accident. Therefore, there is no material to",,,

prove that they were dependents of the deceased. Hence only the 1st appellant - the husband of the deceased â?" was dependent on the deceased.,,,

16. In view of the re-fixation of the notional income of the deceased and the fact that only the 1st appellant is the dependent of the deceased, I hold",,,

that Â½ of the total compensation has to be deducted towards personal living expenses of the deceased.,,,

17. Following the above parameters, I re-fix the loss of dependency of the 1st appellant at Rs.1,47,000/- instead of Rs.50,000/- awarded by the",,,

Tribunal.,,,

18. In Pranay Sethi (supra), the Hon'ble Supreme Court in Clause No.8 of paragraph 61 has held that the dependents of the deceased are entitled for",,,

compensation under the conventional heads, namely loss of estate, loss of consortium and funeral expenses at Rs.15,000/-, 40,000/-and 15,000/-",,,

respectively. Thus, I hold that the 1st appellant is entitled to compensation under the head 'loss of consortium' at Rs.40,000/-. Similarly, it is seen that",,,

the Tribunal had only awarded an amount of Rs.2,000/-towards funeral expenses. In view of the law laid down in Pranay Sethi (supra), the said",,,

amount has to be enhanced to Rs.15,000/-. Like wise, it is seen that the Tribunal has not awarded any compensation under the head 'loss of estate'.",,,

Therefore, I award an amount of Rs.15,000/-under the said head of claim.",,,

19. The Tribunal has awarded an amount of Rs.6,000/- under the head 'pain and suffering'. The Hon'ble Supreme Court in United India Insurance",,,

Co.Ltd. v. Satinder Kaur @ Satwinder Kaur and others [(2020(3)KHC 760] has held that the dependents of the deceased are not entitled for any",,,

compensation under the head 'pain and suffering'. Hence, I set aside the compensation awarded under the said head. Similarly, it is seen that the",,,

Tribunal has awarded an amount of Rs.5,000/- under the head 'love and affection'. In view of the law laid down by this Court in Kunjandy.L and",,,

others v. Rajendran [2020 (2) KLT 315], since compensation has been awarded under the head 'loss of consortium', I set aside the compensation",,,

awarded under the head 'loss of love and affection'.",,,

20. The Tribunal has awarded just compensation of Rs.1,000/- under the head 'transportation' and Rs.4,000/-under the head 'medical expenses', which",,,

Â Sl. No,Heads of claim,"Amount awarded by the

Tribunal (in rupees)","Amounts modified and

recalculated by this Court

1,Transport to Hospital,"1,000","1,000

2.,Funeral expenses,"2,000","15,000

3.,Pain and suffering,"6,000",â?!

4.,Loss of love and affection,"5,000",â?!. .

5.,Loss of estate,â?!.,"15,000

6.,Loss of consortium,â?!.,"40,000

7.,Loss of dependency,"50,000","1,47,000

8.,Medical expenses,"4,000","4,000

,Total,"268,000","2,22,000