
(2012) 07 KL CK 0306
In the High Court Of Kerala
Case No : MACA. No. 65 of 2007

Mary, Jiji and Jojy

APPELLANT

Vs

The Managing Director, K.S.R.T.C., Thiruvananthapuram and
Narayanan

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0306

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : T.N. Manoj, for the Appellant; K. Prabhakaran, SC, K.S.R.T.C., Sri. Babu Joseph Kuruvathazha, SC, K.S.R.T.C. and Sri. Joy George, SC, K.S.R.T.C. for (R1), for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The appellants are the legal heirs of one Thomas, a welder who died in a road traffic accident caused by the negligence of a KSRTC bus driver. The appellants complain that the Motor Accident Claims Tribunal did not award them adequate compensation for the death of Thomas. According to them there is inadequacy in the compensation awarded by the learned Tribunal under almost all heads. We have heard the submissions of Sri. Manoj T.N. learned counsel for the appellants and those of Sri. Joy George learned standing counsel for the KSRTC. The argument of the learned counsel for the appellants is that there is gross inadequacy in the compensation awarded by the learned Tribunal. While the argument of the learned standing counsel for the respondent Corporation is that there is no such inadequacy and there is no such justification for increasing the compensation.

2. Having given our anxious consideration to the rival submissions addressed at the Bar and having carefully gone through the impugned award, we are of the view that there is some inadequacy in the compensation awarded by the learned Tribunal to the appellants. There was evidence to hold that the deceased was a

welder. Ext.A9 issued by the employer of the deceased was to the effect that the deceased was given wages at the rate of Rs. 150/- per day. Ext.A9 was proved by examining PW2, the employer of the deceased. The learned Tribunal adopted only Rs. 2,000/- as the monthly income of the deceased. We feel that the learned Tribunal could have adopted Rs. 3,000/- as the monthly income of the deceased. The learned Tribunal deducted one third of the amount towards personal expenses of the deceased. But, the evidence will reveal that the wife and three children of the deceased were depending on the deceased. According to us, the proper deduction to be made is one fourth. When dependency compensation is recalculated on the basis of the revised multiplicand and making deduction of one forth towards personal expenses of the deceased and adopting the correct multiplicand i.e.14, which was applicable to persons in the age group of the deceased, it will come to Rs. 3,78,000/-. As the amount awarded by the Tribunal under that head is only Rs. 3,00,000/-, we award Rs. 78,000/- more to the appellants towards dependency compensation .

3. Coming to the other counts of compensation, we find that there is inadequacy in the compensation awarded by the Tribunal under some of the heads.

4. Towards pain and suffering, we award Rs. 7500/- more to the appellants.

5. Towards funeral expenses only Rs. 3,000/- was awarded by the Tribunal. We, therefore, award to the appellants Rs. 2000/- more towards funeral expenses.

6. Towards loss of consortium for the young widow, the learned Tribunal awarded only Rs. 5,000/-. We award Rs. 10000/- more to the first appellant towards loss of consortium.

7. Towards love and affection for three children the learned Tribunal awarded only Rs. 7,500/-. We award Rs. 12,500/- more to the appellants towards loss of love and affection. Thus in total, the appellants are awarded a total amount of Rs. 1,10,000/- (78,000 +7500+ 2000+10000+12500) over and above the compensation awarded by the learned Tribunal. We find that this amount exceeds the appellants' claim in the original petition. But, following the principles laid down by the Supreme Court in Nagappa v. Gurudayal (2003 (1) KLT 115 (SC)), we are of the view that this additional amount can be justified even though the same exceeds the appellants' claim. We further order that the amount awarded by the learned Tribunal as well as the additional amount awarded by this court under this judgment will carry interest at the rate of 7% p.a. from the date of the application till the date of realisation.

The appeal is allowed and the impugned award shall stand modified as above.