(2014) 10 KL CK 0083

In the High Court Of Kerala

Case No : MACA. No. 1051 of 2014

National Insurance Co. Ltd. APPELLANT

Vs

Shirly Johnson RESPONDENT

Date of Decision : 21-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0083

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : A.R. George, Advocate for the Appellant; A.N. Santhosh, Advocate for the Respondent

Judgement

T.R. Ramachandran Nair, J.—This appeal is filed by the Insurance Company aggrieved by the award passed by the Tribunal.

2. Mainly it is the quantum that is in dispute. Therefore, we are not going into the details of the accident and other findings. The deceased was aged 46 years at the time of the accident and the 1st petitioner before the Tribunal, his widow was aged 44, the major son was aged 21 and the two other children were minors at the time of the accident.

3. The Tribunal has awarded a total sum of Rs. 17,59,923/- as compensation as per the details shown below:

Sl.No.

Head of Claim

Amount Claimed ()

Amount Awarded ()

1

Loss of dependency

14,50,000

13,19,923

2

Transport to hospital

1000

5000

3

Damage to clothes

1000

4

Transportation charges of dead body

2000

5

Funeral expenses

40000

25000

6

Pain and sufferings

15000

5000

7

Loss of love and affection

2,00,000

3,00,000

8

Loss of consortium

1,50,000

1,00,000

9

Loss of estate

25000

5000

Total

18,84,000

17,59,923

4. The main attack is against the grant of amount towards loss of love and affection and loss of consortium. The learned counsel for the Insurance Company submitted that the amount is on a higher side.

5. The learned counsel for the respondent submitted that the Tribunal below has relied upon the judgment of the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, and he further relied upon the recent judgment of the Apex Court in Kalpanaraj and Others Vs. Tamil Nadu State Transport Corpn., . It is submitted that towards loss of estate only Rs. 5,000/- has been granted and therefore the award does not require any modification.

6. In fact the Apex Court in a recent judgment reported in Union of India (UOI) Vs. Raj Kumar Baghal Singh, has referred to various judgments wherein the principles in regard to the assessment of compensation, have been laid down. After referring to the judgments in Rajesh and Others Vs. Rajbir Singh and Others, and Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, their Lordships have granted Rs. 1 lakh towards loss of love and affection, Rs. 1 lakh towards loss of estate and Rs. 1 lakh towards loss of consortium.

7. Herein, going by the particular facts of this case, it is clear that one of the sons was a major at the time of the accident. But we find that towards loss of estate even though the amount that can be granted is Rs. 1 lakh, only Rs. 5,000/- has been granted.

8. The Tribunal has assessed Rs. 3 lakhs towards loss of love and affection which is excessive. Therefore, we modify the same and fix Rs. 1 lakh towards loss of love and affection. But towards loss of estate only Rs. 5,000/- has been granted and we refix the same and award Rs. 1 lakh towards loss of estate and accordingly we readjust the compensation as follows:

Sl.No.

Head of Claim

Amount Awarded ()

1

Loss of dependency

13,19,923

2

Transport to hospital

5000

3

Funeral expenses

25000

4

Pain and sufferings

5000

5

Loss of love and affection

1,00,000

6

Loss of consortium

1,00,000

7

Loss of estate

1,00,000

Total

16,54,923

9. Therefore as against the total amount of Rs. 17,59,923/- fixed as compensation, after our refixation it will be Rs. 16,54,923/- and the appeal is allowed to that extent.

10. Since it is pointed out that cost is granted in proportionate to the amount awarded, we refix the total cost allowed by the Tribunal at Rs. 1 lakh and the award is modified accordingly.

11. It is submitted by the learned counsel for the respondent that the minor children have become major. Therefore, we allow the claimants to withdraw the amount deposited in tune with the proportion fixed by the Tribunal. If any excess amount has been deposited before the Tribunal by the Insurance Company in terms of the award of the Tribunal, it will be refunded back to the Insurance Company. No costs.

