(2021) 11 KL CK 0098

In the High Court Of Kerala

Case No : M.A.C.A Nos.1713, 2011 of 2012

Oriental Insurance Co. Ltd — APPELLANT

Vs

Annie Babu — RESPONDENT

Date of Decision : 15-11-2021

Acts Referred:

Citation : (2021) 11 KL CK 0098

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : George Cherian, K.S.Santhi, K.V.Rajan, T.Aby Jacob, C.Arun Prasanth, Anoop Mathew Abraham, A.S.Brijesh, Roopa Ramachandran

Final Decision : Allowed/ Dismissed

Judgement

A. Badharudeen, J

1. M.A.C.A.No.2011/2012 is an appeal at the instance of the original petitioners in O.P.(M.V) No.610/2011 before the Motor Accidents Claims Tribunal, Ernakulam. The 3rd respondent, Insurance Company filed M.A.C.A. No.1713/2012 against the same award disputing liability.

2. Heard both sides in detail.

3. Brief facts of the case:

One Babu died as a result of a motor accident occurred on 14.02.2011 and his legal heirs viz., the appellants approached the Tribunal and claimed compensation to the tune of Rs.10 lakh. R3 and R6, the respective Insurance Companies, filed written statements and admitted policy. The negligence and quantum of compensation were disputed. The Tribunal examined PW1 and marked Exts.A1 to A13 on the side of the petitioners/appellants. Ext.B1 marked on the side of the 3rd respondent, M/s.Oriental Insurance Company Limited.

4. On analysis of the evidence available, the Tribunal granted Rs.4,61,500/- as compensation with 8% interest, fastening liability on the 3rd respondent after

finding liability against respondents 1 to 3 jointly and severally.

5. M.A.C.A. No.2011/2012 is at the instance of the original petitioners canvassing quantum of compensation. While canvassing increase, it is submitted by the learned counsel for the appellants that though the appellants claimed Rs.6,950/- as income of the deceased, as a milk salesman, the Tribunal fixed Rs.4,000/- as the monthly income, ignoring the evidence of PW1, the employer given in this case.

6. I do not think that much discussion on this point is required since in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. : (2011) 13 SCC 236, the Honourable Apex Court fixed the income of a coolie worker as Rs.4,500/-, during the year 2004. If so, Rs.6,950/- claimed by the appellants in relation to an accident of the year 2011 could be less than the amount covered by Ramachandrappa's case (supra). Therefore, I re-fix the monthly income as Rs.6,950/-.

7. It is submitted by the learned counsel for the appellant further that 25% addition also to be made following the ratio in National Insurance Company Ltd. v. Pranay Sethi : (2017) 16 SCC 680. This aspect is not opposed by the learned counsel for the Insurance Company. Therefore, the income for calculating 'loss of dependency' also to be re-fixed and is calculated as;

6,950+25% = 8,687x12x13x2/3 = 9,03,500/-

Out of which, Rs.4,16,000/- was granted by the Tribunal. Therefore, Rs.4,87,500/- more is entitled by the appellants.

8. Coming to other heads, the Tribunal granted 'funeral expenses' at Rs.7,500/- and Rs.2,000/- towards the head 'loss of estate'. It is settled as per the decision in Pranay Sethi's case (Supra) that appellants are entitled to get Rs.7,500/- more under the head 'funeral expenses' and Rs.13,000/- more under the head 'loss of estate'.Therefore, Rs.20,500/- more is granted under these heads. Coming to 'loss of consortium', the Tribunal granted only Rs.15,000/- though the appellants are entitled to get Rs.1,20,000/-. Therefore, Rs.1,05,000/- more is granted under the head 'loss of consortium' following the ratio in Pranay Sethi's case (supra).

9. It is submitted by the learned counsel for the Insurance Company that Rs.5,000/- was granted by the Tribunal under the head 'pain and suffering' though the same is impermissible following the ratio in United India Insurance Co. Ltd v. Satinder Kaur @ Satwinder Kaur and others : 2020 (3) KHC 760. Similarly, Rs.15,000/- also was granted under the head 'loss of love and affection' and it cannot be granted in view of the decision in Satinder Kaur's case (supra). Therefore, Rs.20,000/-granted under these heads is reduced.

10. It is held that the appellants are entitled to get Rs.10,54,500/- as compensation out of which Rs.4,61,500/- was granted by the Tribunal and the balance amount of Rs.5,93,000/- (Rupees Five Lakh Ninety Three Thousand

Only) is granted as enhanced compensation with the same rate of interest awarded by the Tribunal, payable by the 3rd respondent - Insurance Company from the date of petition till the date of deposit or realisation.

11. The appellant valued the claim at Rs.10,00,000/- and court fee payable is calculated as Rs.9,373/-. In view of grant of Rs.54,500/- in excess of the claim, the appellant is bound to deposit Rs.545/- as additional court fee. The Insurance Company is directed to deposit Rs.545/- as additional court fee by a separate cheque in favour of M.A.C.T. and the remaining amount in the name of the appellants in the proportion fixed by the Tribunal within two months from today.

12. Coming to M.A.C.A. No.1713/2012, the Insurance Company disputed liability on the ground that the deceased was a person travelling inside a goods autorickshaw. Though the learned counsel for the appellant attempted to canvass exoneration, she conceded that as per Ext.B1 policy two persons were permitted to travel in the goods autorickshaw. Reading the award and Ext.B1 policy, it could be seen that two persons were permitted to travel inside the goods autorickshaw and, therefore, the Company is bound by the contract of Insurance and any deviation therefrom cannot be permitted. Therefore, the contention advanced by the Insurance Company to treat the deceased as a gratuitous passenger must fail.

13. It is submitted by the learned counsel for the Insurance Company further that there was violation of policy conditions, on specific assertion that the driver did not possess a badge at the time of accident, but the said contention was negatived by the Tribunal. However, the learned counsel conceded the fact that absence of badge have consequence only when the weight of the vehicle is above 7,500 Kg, going by the decision in Mukund Dewangan v. Oriental Insurance Company Limited : 2017 (3) KLT 1000, followed by this Court in New India Assurance Company Limited v. Mathew : 2021 (4) KLT 471. Therefore, this contention is also cannot be appreciated. In view of the matter, M.A.C.A. No.1713/2012 must fail and the same deserves dismissal.

In the result, M.A.C.A. NO.2011/2012 is allowed. Rs.5,93,000/- is granted as enhanced compensation, vide paragraph 10 of this judgment. M.A.C.A.No.1713/2012 stands dismissed.