(2022) 07 KL CK 0202

In the High Court Of Kerala

Case No : Motor Accident Claims Appeal Nos. 1721, 1930 Of 2011

Oriental Insurance Co.Ltd. APPELLANT

Vs

Subhadra RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Citation : (2022) 07 KL CK 0202

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : A.R.George, Rinu. S. Aswan, Arun Babu

Final Decision : Dismissed

Judgement

A.Badharudeen, J.

1. M.A.C.A.No.1721/2011 is an appeal filed by the 3rd respondent insurance company challenging award in O.P(MV).No.1082/2008 dated 12.05.2011 on the file of Motor Accident Claims Tribunal, Neyyattinkara. Claimants and respondents 1 and 2 are the respondents in the above appeal.

2. M.A.C.A.No.1930/2011 is an appeal at the instance of the petitioners in the above case.

3. I would like to refer the parties in these appeals as `petitioners' and `insurer'.

4. Short facts : In this matter one Kuttan alleged to have sustained injuries in a motor accident occurred on 25.07.2008 at about 5 p.m while he was travelling in a lorry bearing Reg.No.KL-7H/6865 in his capacity as the cleaner of the same, sitting himself beside the driver's seat on the left side of the cabin. Consequently, the above said Kuttan died and the legal-heirs lodged petition for compensation, attributing negligence against the 2nd respondent lorry driver from respondents 1 to 3.

5. The 2nd respondent remained exparte before the Tribunal.

6. The 1st respondent filed written statement contending that Kuttan was employed in the lorry as a cleaner and he had been paid Rs.6,000/- per month as salary and Rs.60/- per day as batta. 1st respondent also highlighted valid insurance policy with the 3rd respondent to the lorry, while disputing the quantum.

7. The insurance company filed written statement opposing accident and negligence. A specific contention was raised by the insurance company stating that Kuttan was a gratuitous passenger in the lorry and therefore, the company has no liability to indemnify the insured.

8. The Tribunal recorded evidence of PW1 and PW2 and marked Exts.A1 to A14 series on the part of the petiitoners. Ext.B1 was marked on the side of the insurer and Ext.X1 was also marked.

9. The Tribunal on appreciation of evidence, granted Rs.4,82,905/- as compensation along with interest @ 9% per annum from the date of petiiton till date of deposit or realisation.

10. In M.A.C.A.No.1930 of 2011 the petiitoners seek enhancement. It is argued by the learned counsel for the petiitoners that the Tribunal fixed the annual income of the deceased at Rs.54,000/- and calculated the loss of dependency income. It is argued by the learned counsel for the petiitoners that the petitioners claimed Rs.7,500/- as the monthly income of the deceased, who was aged 54 years at the time of the accident in this case involving accident of the year 2008. Following the ratio in [(2011) 13 SCC 236], Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd., the monthly income applicable in this case is Rs.6,500/- plus 10% addition following the ratio in [(2017) 16 SCC 650], National Insurance Company Ltd. v. Pranay Sethi & Ors. Therefore, the loss of dependency requires recalculation as under:

7,150 [6,500 + (6500X10%)] X 3/4 X 12 X 11 = Rs.7,07,850/-, out of which Rs.3,96,000/- was granted by the Tribunal. Hence Rs.3,11,850/- more is granted under the head loss of dependency.

11. In this case the claimants are the wife and children and therefore they are entitled to get compensation under the conventional and traditional heads following the ratio in Pranay Sethi's case (supra). Hence the petiitoners are entitled to get loss of consortium to the tune of Rs.1,60,000/- @ Rs.40,000/- each. Rs.12,000/- was granted by the Tribunal under the head loss of consortium. Hence Rs.1,48,000/- more is granted under the head loss of consortium. Towards loss of estate, the Tribunal granted Rs.12,000/- alone. Hence Rs.3,000/- more is granted under the head loss of estate following the ratio in Pranay Sethi's case (supra). The Tribunal granted Rs.5,000/- only under the head funeral expenses and Rs.10,000/- more is granted under this head.

12. It is pointed out by the learned counsel for the insurance company that the Tribunal granted Rs.15,000/- under the head loss of love and affection and

Rs.15,000/- under the head pain and sufferings. Since the same are impermissible following the ratio in the decision reported in [AIR 2020 SC 3076], United India Insurance Co.Ltd. v. Satinder Kaur, the same are liable to be reduced. This submission appears to be convincing. Therefore, Rs.30,000/- granted under the above heads stands reduced.

13. The learned counsel for the insurer vehemently opposed the liability of the insurer in this case. The learned counsel for the insurance company submitted that the status of Kuttan is nothing but as that of a gratuitous passenger since it is established by evidence that he was thrown out from the platform of the lorry while he was travelling in the lorry. Therefore, the company has no liability to indemnify the insured treating the Kuttan as an employee of the lorry working as cleaner. In support of this contention the learned counsel for the insurer placed decisions reported in [2012 (4) KHC 556 : 2012 (4) KLT 633 : 2012 (4) KLJ 854 : ILR 2012 (4) Ker.943], National Insurance Company (M/s.) v. Mohammed Ali & Ors.; [2013 (3) KHC 873 : 2013 (3) KLT 421 : 2013 (3) KLJ 417 : ILR 2013 (3) Ker. 732], National Insurance Company Ltd. (M/s.) v. Printo P.Jose & Ors. and [2011 (1) KLT 496], Sulaiman v. Alipa.

14. Repelling this contention, the learned counsel for the petiitoners placed decisions of this Court reported in [2019 (3) KHC 925 : 2019 (3) KLT 274 : ILR 2019 (3) Ker. 557 : 2019 (3) KLJ 874], Krishnakumar v. Madhu P.S & Ors. and [2014 (4) KHC 809 : 2014 (4) KLJ 751 : ILR 2014 (4) Ker. 909 : 2015 (1) KLT 45 : AIR 2015 Ker. 36 : 2015 ACJ 604], United India Insurance Company Ltd., Kochi v. P.R.Surendran & Ors.

15. In this case, the 1st respondent, the owner of the vehicle filed written statement admitting the fact that Kuttan was working as a cleaner of the lorry and the policy issued by the company would cover the risk of the workers also. In view of the matter, I have no hesitation to hold that the insurance company is liable to indemnify the insured since the person died in this accident was working as cleaner in the lorry at the time of the accident. Therefore, the contention of the insurance company is found to be not sustainable.

16. In the result,

(i) M.A.C.A.No.1721/2011 stands dismissed;

(ii) M.A.C.A.No.1930/2011 is allowed in part and it is ordered that the petitioners are entitled to get enhanced compensation to the tune of Rs.4,32,850/- (Rupees Four lakh thirty two thousand eight hundred fifty only) with interest @ 9% per annum granted by the Tribunal from the date of petiiton till the date of deposit or realisation.

17. It is noticed that court fee for Rs.6 lakh alone was valued by the petitioners and they are liable to pay court fee for the enhanced compensation (Rs.3,15,755/-) to the tune of Rs.3,160/-(Rupees Three thousand one hundred sixty only) in addition to the court fee already ordered by the Tribunal.

18. Therefore, the 3rd respondent is directed to deposit Rs.3,160/- by separate cheque in the name of M.A.C.T, Neyyattinkara, towards additional court fee.

The insurance company is directed to deposit the remaining amount in the name of the petiitoners in the ratio of 40:20:20:20 within two months from today and on deposit, the petitioners can release the same.