

(2015) 02 KL CK 0059
In the High Court Of Kerala
Case No : M.A.C.A. No. 1118 of 2012

P. Usha and Others

APPELLANT

Vs

N. Ramakrishnan Nair and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Citation : (2015) 02 KL CK 0059

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

Bench : Division Bench

Advocate : Ajith Krishnan, for the Appellant; K.T. Shyamkumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T.R. Ramachandran Nair, J.—The claimants are the appellants herein and amount of compensation claimed is consequent on the death of late Sri. P. Ramachandran, who was an autorickshaw driver. The death occurred after he was involved in an accident which took place on 23/02/2006 at about 8.30 p.m. He was travelling in a Mahindra jeep bearing Reg. No. KBT-5237 through Thiruvananthapuram-Kollam National Highway towards Kollam. When it reached near Chathanloor, it hit against a motor cycle bearing Reg. No. KL-2-U-7004, which was coming from the opposite direction. The jeep further proceeded and hit against a goods autorickshaw bearing Reg. No. KL-02-T-6757 which was coming from the opposite direction. The jeep capsized and the deceased was thrown out of the jeep and sustained very serious injuries. He died on 25.2.2006 while undergoing treatment in the Medical College Hospital, Thiruvananthapuram.

2. The registered owner of the vehicle, the first respondent is found liable to meet the liability as the policy was only a "Liability Only Policy". A total compensation of Rs. 4,12,500/- has been granted by the Tribunal.

3. The learned counsel for the appellant raised two contentions. One is regarding the quantum and the other relating to the coverage under the policy. The

Insurance Company has filed an affidavit producing Annexure 1, copy of the policy. It is a "Liability Only Policy". Going by the same, for basic liability, Rs. 700/- has been paid as premium. The premium paid under other heads namely PA (Personal Accident) is Rs. 100/-. The legal liability of driver is Rs. 25 and for any extra loading it is Rs. 210/-.

4. The argument built up by the learned counsel for the appellants is that the amount representing extra loading is for coverage in a case like the one herein. The learned Senior counsel for the Insurance Company explained that the same is not premium amount obviously. The amount representing extra loading is fixed and collected by the Insurance Company in the light of the fact that the owner might have availed claims during the previous year.

5. On a perusal of the policy, we find no reason to disagree with the contention raised by the Insurance Company. Therefore the policy being a liability only policy, the company will not be liable.

6. As far as the quantum of compensation is concerned, the Tribunal has granted compensation going by the table given below under different heads:

7. The deceased was treated for three days after which he died. The Tribunal has granted Rs. 10,000/- towards compensation for pain and suffering, which is justified. But as far as funeral expenses is concerned, Rs. 5,000/- alone has been granted which we enhance to Rs. 25,000/-. For loss of consortium of wife and loss of love and affection of the dependent son and the mother of the deceased, we grant @ Rs. 100,000/- in the light of the judgment in Rajesh and Others Vs. Rajbir Singh and Others, . For loss of estate, nothing has been granted by the Tribunal. We grant an amount of Rs. 50,000/- under the said head.

8. The deceased was aged 48 at the time of the accident and the multiplier fixed is 13. The driving licence of the deceased has been produced as Ext. A7. Even though documentary evidence is not there with regard to the monthly income, in the light of the fact that he was a skilled driver, it will be only reasonable to fix Rs. 6,000/- as the monthly income since the accident is of the year 2006 and we also rely upon the judgment of the Apex Court in Minu Rout and Another Vs. Satya Pradyumna Mohapatra and Others, , where the Apex Court has adopted Rs. 6,000/- as the monthly income of the driver in an accident which occurred in the year 2005. It was held that the Tribunal and the Courts should take judicial notice of the fact that the driver is having a skilled job. Therefore, the compensation towards loss of dependency is recomputed as Rs. 6,24,000/- (6000 x 12 x 13 x 2/3).

9. Accordingly the total compensation will be as follows:

10. As regards the liability of the first respondent, we have heard the learned counsel for the first respondent and the learned counsel for the fifth respondent. It is submitted by the learned counsel for the above respondents that the vehicle was actually transferred by the first respondent to the fifth respondent who in

turn transferred it to the sixth respondent before the Tribunal. But during the pendency of the matter before the Tribunal, he died. He was impleaded in the light of the contention raised by the first respondent. It is submitted that his legal heirs were not impleaded before the Tribunal. According to the learned counsel for the first respondent as the vehicle has already been transferred and possession was also with the sixth respondent, no liability can be fastened on the first respondent. The same is the argument raised by the learned counsel for the fifth respondent also.

11. The learned counsel therefore seeks for a remand of the matter to consider the same. As far as the appellants are concerned, for recovering the amount, the liability of the person who was having ownership and possession of the vehicle has to be fixed. The first respondent was found liable since he was the registered owner. Therefore for the limited purpose, we remand the matter for consideration by the Tribunal and as regards the total compensation allowed, the same will be at the rate as we now fixed. The enhanced compensation will carry interest @ 9% per annum. Appropriate decision will be taken by the Tribunal as regards the person who is liable to satisfy the award. All the parties are given opportunity to adduce evidence. It is open to the appellants to implead the legal heirs of deceased sixth respondent before the Tribunal.

The appeal is accordingly disposed of. The parties shall bear their costs in the appeal.