
(2014) 12 KL CK 0086
In the High Court Of Kerala
Case No : M.A.C.A. No. 2906 of 2014

Paritha Beevi

APPELLANT

Vs

Managing Director

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2014) 12 KL CK 0086

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

Bench : Division Bench

Advocate : P.V. Baby and A.N. Santhosh, Advocate for the Appellant; Bimala Baby, SC and A.A. Ziyad Rahman, Advocate for the Respondent

Judgement

P.V. Asha, J.—The appellants are the legal heirs of the deceased Diwan Mydeen, who met with an accident on 08.03.2008 and succumbed to the injuries on the same day. Claim petition was filed seeking compensation to the tune of Rs. 8,88,000/-, which was limited to Rs. 5 lakhs.

2. It was stated that the deceased was doing retail business in clothes and was earning a monthly income of Rs. 6,000/-. He was 53 years old. The widow and 3 children have come up in appeal seeking enhancement of the award. The Tribunal had, reckoning monthly income at Rs. 3,500/- and after deducting 1/3rd towards personal expenses and adding its 30% towards future prospects, fixed the compensation under the head of loss of dependency at Rs. 3,27,600/-. The appellants submitted that the amount awarded under various heads are thoroughly inadequate. The Tribunal has awarded the compensation as follows:

3. We heard the learned counsel appearing for the Insurance Company also, who opposed the claim for enhancement. It is seen that the deceased was maintaining the family of his wife and 3 children. The Tribunal has deducted 1/3rd towards personal expenses. When there are 4 members, the actual deduction should have been 1/4th. Similarly the multiplier adopted was 9. When the deceased was 53 year at the time of the accident. Going by the dictum in

Sarla Verma v. Delhi Transport Corporation (2010 (2) KLT 802), it would have been 11. In the circumstance of this case, that the appellant was a retail merchant in cloth, we fix his income as Rs. 4,500/- per mensem. The amount under loss of dependency therefore will come to Rs. 4,45,500/- (Rs. 4500 X 12 X 11 X 3/4). It is seen that the Tribunal has not awarded any amount towards loss of love and affection. Similarly under the head "shock and anxiety" also, nothing is granted. We therefore award a sum of Rs. 1 lakh towards loss of love and affection as well as shock and anxiety. Similarly, the Tribunal has not granted any amount under the head "loss of estate". We award an amount of Rs. 25,000/- under this head. Under the head "Loss of expectation of life" also the Tribunal has not granted any amount. We therefore award an amount of Rs. 15,000/- under this head. The award is accordingly modified as follows:

The appellant will be entitled to a total compensation of Rs. 7,22,500/- (Rupees Seven lakhs twenty two thousand and five hundred only) along with 9% interest per annum as per the decision of the Apex Court in *Supei Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.* ((2009) 4 SCC 513) from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, the claimants can withdraw the amount.

The appeal is allowed accordingly. No costs.