(2013) 06 KL CK 0071

In the High Court Of Kerala

Case No : M.A.C.A. No. 145 of 2009

Radha and Another APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 05-06-2013

Acts Referred:

Citation : (2013) 3 KLJ 166

Hon'ble Judges : S. Siri Jagan, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : V.K. Gopalakrishna Pillai and Gopakumar G, for the Appellant; P. Miraleedharan (SC), for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—Petitioners who are the parents and elder brother of the deceased in O.P.(M.V) No. 507/2005 on the file of the Motor Accidents Claims Tribunal, Perumbavoor are the appellants herein. The deceased, who is the son of the petitioners I and 2 was travelling in the motor cycle as a pillion rider, and at that time, the lorry with Registration No. KLI/1202, driven by the 2nd respondent, owned by the first respondent and insured with the 3rd respondent came and hit against the motor cycle, causing death of the son of the petitioners I and 2 and injury to the rider of the motor cycle. They claimed compensation on various heads. 1st and 2nd respondents remained ex-parte. 3rd respondent, insurance company filed written statement admitting the insurance, but denying the negligence on the part of the 2nd respondent and contended that the accident occurred due to the negligence of the rider of the motor cycle, and the amount claimed under various heads are high and excessive. After considering the evidence on record, the tribunal found that the accident occurred due to the negligence of the 2nd respondent, and awarded compensation to the petitioners as follows:

Awarding a total compensation of Rs. 3,57,780/-. During the pendency of the petition, first petitioner who is the father of the deceased died, and others were recorded as his legal heirs. The tribunal has apportioned the compensation payable to 2nd petitioner as 75% and 3rd petitioner as 25%. Dissatisfied with the amount of compensation awarded, the petitioners filed this appeal.

Heard both sides. The counsel for the appellants submitted that, the tribunal has taken the age of the dependants as a criteria for fixing the multiplier, and taken only 15 as multiplier, which is against the decision of the Hon''ble Supreme Court in Sarla Verma''s case and later confirmed in Reshma Kumari''s case. He had also relied on the decision of Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , and others, for the proposition that the age of the dependents is immaterial, while assessing compensation and the age of the deceased alone has to be taken into consideration. According to him, the monthly income fixed by the court below is also less. According to the counsel for the appellants, he is entitled to get more compensation than the compensation awarded by the court below. The counsel for the Insurance company argued that the tribunal has taken note of all the aspects and the amount awarded is just and proper, and in the case of bachelor, the dependents being parents, the age of the parents will have to be taken into consideration for fixing the compensation.

2. The case of the petitioners in the petition was that the deceased was a mason, earning Rs. 4,000/- per month, but no evidence has been adduced on the side of the petitioners to prove this fact. The tribunal has taken the monthly income, considering his age as Rs. 2,500/- per month, which we feel, on the lower side. Considering the inflation of money value and also cost of living and considering the age of the deceased, the lower court ought to have fixed the monthly income as Rs. 3,000/- instead of Rs. 2,500/- per month and we do so.

In view of the dictum laid down in the decision reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, : Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , which has been affirmed in the later decision of the larger bench of the Hon''ble Supreme Court reported in Reshma Kumari and Others Vs. Madan Mohan and Another, . The fact to be considered in the case of death are (1) age of the deceased, (2) monthly income and (3) multiplier to be applied. Further, in these cases it was held that, in the case of bachelor, 50% of the income has to be deducted and the balance amount can be taken as the amount given to the family as dependency. In the decision reported in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , and others, the Hon''ble Supreme Court has held that the selection of multiplier is based on the age of the deceased, and not on the basis of the age of the dependants. So, considering these aspects, the multiplier taken by the lower court as 15 is not correct. The correct multiplier will be 18, as the deceased aged only 20 years at that time. So taking the monthly income of the deceased as Rs. 3,000/- and the multiplier is 18 and applying Sarla Verma''s case that, 50% of the monthly income has to be deducted in the case of bachelors (claimants being parents) for personal expenses, the total compensation awarded under the head loss of dependency will come to Rs. 3,24,000/- (1500 x 12 x 18) instead of Rs.

2,30,088/- awarded by the tribunal. As regards other amounts are considered, the tribunal had awarded just and proper compensation, which we do not incline to enhance. So the petitioner will be entitled to get an enhanced compensation of Rs. 93,912/-, which we round to Rs. 93,9207/-, which the petitioners are entitled to get together with 9% interest from the date of petition, till payment and this amount is payable by the 3rd respondent/insurance company, within two months from today. Considering the fact that the 2nd respondent is the only bother of the deceased, we feel that the entire enhanced compensation can be given to the mother/1st appellant as 25% of the compensation fixed by the court below has already been given to the elder brother of the deceased, who is the 2nd respondent.

With the above modification of the award passed by the tribunal, the appeal is disposed of.

