(2021) 12 KL CK 0134

In the High Court Of Kerala

Case No : MACA NO. 741 Of 2013

Radha, Wife Of Nanu — APPELLANT

Vs

Hamza K.K. — RESPONDENT

Date of Decision : 17-12-2021

Acts Referred:

Citation : (2021) 12 KL CK 0134

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : Jacob Abraham, Zubair Pulikkool, A.R.George

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. On 2.11.2001, when the 1st appellant's husband Nanu was walking on the side of the National Highway, a motorcycle driven by the 2nd respondent in a rash and negligent manner hit him and he sustained serious injuries. He was taken to Medical College Hospital, Kozhikode, but he succumbed to the injuries on the same day. The legal representatives of the deceased preferred the claim petition. The Tribunal awarded a sum of Rs.1,36,000/- as compensation. The appeal is filed claiming enhancement.

2. Heard the counsel for the appellants and the respondents.

3. The 1st respondent contended that he had sold the vehicle to the 2nd respondent on 13.12.2000 and possession had also been handed over on that date. It is submitted that he had no intimation regarding the accident and it was the 2nd respondent who had got the vehicle released from the Police station as owner in possession of the motor cycle. It is hence submitted that since he is not the owner of the vehicle, he is not liable to pay any compensation. The 2nd respondent remained ex parte. The 3rd respondent contended that the vehicle was insured with them during the relevant period, but that the 2nd respondent

did not have a valid driving license at the time of the accident. The Tribunal found that the person responsible for the accident was the 2nd respondent who was negligent in driving the vehicle. The insurer had filed an application for causing production of the driving license from the 2nd respondent but the 2nd respondent did not produce the driving licence and hence adverse inference was drawn against him. Exhibit X1 is the petition filed before the Judicial First Class Magistrate Court, Payyoli, for release of the vehicle. It can be seen that the petition was filed by the 2nd respondent stating that he is the real owner and the vehicle was released to him. The 1st respondent placed reliance on the decision in Mathew Thankachan v. Manoharan reported in [ILR 1998 (1) Kerala 476]. The contention is that when the ownership of the offending vehicle is transferred bona fide, the transferee will be liable to pay compensation even if the registration certificate is not transferred. The Court had held that the endorsement of transfer in the certificate of registration is not a condition precedent for sale of the vehicle. In the above circumstances, the Tribunal passed the award against the 2nd respondent alone.

4. If the driver of the offending vehicle did not have a license, it is a breach of condition of the contract of insurance and the owner would be liable to pay the compensation [See National Insurance Co Ltd v. Kusum Rai [2006 (2) KLT 300 (SC)]. It is the admitted case that the registration certificate still shows the 1st respondent as the owner of the vehicle. In Naveen Kumar v. Vijay Kumar & Ors. reported in [(2018) 3 SCC 1], the Hon'ble Supreme Court has categorically held that the owner of the vehicle as per the records of the Registering Authority does not stand absolved of the liability even if his case is that he had transferred the vehicle.

5. In view of the law laid down by the Hon'ble Supreme Court, the 1st respondent could not have been absolved from the liability. Even if the 2nd respondent driver did not have a licence, the insurer would have been liable to pay the compensation and claim recovery from the registered owner of the vehicle, for the reason of violation of policy conditions. It is submitted by the counsel for the 1st respondent that the 2nd respondent driver expired. Since this Court had declared that service to the 2nd respondent was sufficient, there was no way to ascertain the above fact. The counsel for the 1st respondent also points out that if the parties are able to prove that the 2nd respondent in fact had a valid licence, then the liability cannot be fastened on the 1st respondent. Since the fixation of the liability by the Tribunal is not in accordance with law, the case needs to be remanded for passing of fresh award in accordance with law as far as that aspect is concerned. However, I am of the opinion that the issue regarding the quantum of compensation need not be remanded.

6. As far as the quantum of compensation is concerned, the Tribunal had fixed the notional income as Rs.2,000/-. The case of the appellants is that the deceased was a businessman doing business in copra and was earning Rs.4,500/- per month. In the absence of evidence, applying the yardstick in

Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd., reported in [AIR 2011 SC 2951], the notional income should be fixed as Rs.3,000/- per month. An increase of 10% of the income should be made towards future prospects since the deceased was between 50 and 60 years of age and was not having a permanent employment. As per the dictum in Sarla Verma vs Delhi Transport Corporation & Ors. reported in [2010 (2) KLT 802], the multiplier to be adopted in the case of the deceased should be 11. Since the dependents were the wife and 4 children, the amount to be deducted towards personal expenses should be 1/4th. The amount payable towards loss of dependency will hence be Rs.3,26,700/- (3000x110%x 12x11x3/4). After deducting the sum of Rs.1,28,000/- awarded by the Tribunal, the appellants will be entitled to an additional compensation of Rs.1,98,700/- under that head. Regarding the conventional heads, the amounts awarded by the Tribunal are very less. The appellants are entitled to Rs.15,000/- each towards funeral expenses and loss of estate. After deducting Rs.2,000/-awarded by the Tribunal, the appellants will be entitled to an additional amount of Rs.13,000/- towards funeral expenses and a sum of Rs.15,000/- towards loss of estate. The 1st appellant will be entitled to Rs.40,000/- towards loss of consortium in the place of Rs.5,000/- awarded. An additional amount of Rs.35,000/- has to be paid under that head. The 4 children of the deceased are entitled to parental consortium. However, since they are major children, I am of the opinion that the amount of parental consortium should not be at the rate of Rs.40,000/- as in the case of spousal consortium. The 4 children together are awarded a sum of Rs.1,00,000/- towards parental consortium. The total amount to be awarded under the head loss of consortium will hence be Rs.1,35,000/-.

In the result, the appeal is allowed in so far as it relates to the claim for enhancement of the compensation. The appellants along with the 4th respondent are entitled to additional compensation of Rs.3,61,700/- (Three Lakhs Sixty One Thousand Seven Hundred only) with interest at the rate of 9% per annum from the date of filing of the claim petition (08.01.2002) till the date of realisation, with proportionate costs. The appeal was filed with a delay of 2120 days. By order dated 12.03.2020, this Court condoned the delay in filing the appeal on condition that the appellants will not be entitled to interest on the enhanced compensation which may be awarded by this Court for the period of 2120 days. The interest payable on the enhanced compensation shall be hence excluding the period of 2120 days. The 3rd respondent shall deposit the additional compensation awarded along with the interest and proportionate costs, before the Tribunal within two months from the date of receipt of a certified copy of this judgment, after deducting any amount to which the appellants are liable towards balance court fee and legal benefit fund. The disbursement of the compensation to the appellants shall be in accordance with law. The case is remanded to the Tribunal for passing a fresh award after deciding as to the liability of the respondents 1 and 2. The 3rd respondent shall be entitled to recover the amount of compensation awarded by the Tribunal as modified by this Court, from the person found liable by the Tribunal. The parties shall be entitled to let in additional evidence regarding the above issue. The parties will appear before the Tribunal on 24.01.2022. The Tribunal shall endeavour to pass fresh award as directed, within 6 months from 24.01.2022.

