

(2012) 03 KL CK 0188

In the High Court Of Kerala

Case No : MACA. No. 2127 of 2011 and OP (MV.) 178 of 2003

Radhakrishnan Nair, Leela Nair and Rahul

APPELLANT

Vs

National Insurance Comapny Ltd., Junagadh Divisional Office,
Manavadar Branch, Station Road Above Bank of Baroda,
Gujarat State, Pin- 362630

RESPONDENT

Date of Decision : 08-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0188

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : V.N. Ramesan Nambisan, for the Appellant; M.A. George, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The appellants are the parents and minor brother of one Rakesh who succumbed to the injuries sustained by him in a road traffic accident occurred on 30/5/2002. Allegedly while the deceased was riding his two wheeler, he was hit down by a truck which was coming from the opposite direction. Against the claim of Rs. 7 lakhs, the learned Tribunal awarded a sum of Rs. 2,68,000/- together with interest at 6% per annum from the date of filing of the petition till the realization. The adequacy of compensation is under challenge.

2. We have heard the learned counsel for the appellant and the learned standing counsel for the respondent- Insurance Company.

3. Allegedly, the deceased was a fitter in a tyre retreading shop at Rajkot. He was 24 years at the time of the accident. The case of the appellants is that the deceased was earning a monthly income of Rs. 4500/-. The learned counsel for the appellant would submit that though Ext. A11 certificate was admitted in evidence to prove the monthly income, the same was not taken into account by the learned Tribunal for fixing the compensation for loss of dependency. The

learned counsel for the respondent per contra would submit that Ext.A11 certificate was not properly proved and thus the learned Tribunal fixed the notional monthly income of the deceased at Rs. 2000/- for computing the compensation for loss of dependency. We do notice that the accident was of the year 2002. As the deceased was only 24 years at the time of the accident, it is only reasonable to hold that he might have earned at least Rs. 3,000/- per month by engaging himself in any profession or job. The first appellant who is the father of the deceased, was aged 49 years at the time of the accident. Though it is alleged that the 2nd appellant who is the mother of the deceased was aged 38 years at the time of the accident, the learned Tribunal could not take into account the same. The appellants have not stated the correct age of the 2nd appellant either in the claim petition or in the appeal memorandum. As there is no convincing evidence regarding the age of the 2nd appellant, we are of the view that proper multiplier that can be adopted in the present case is 14 which is applicable to the age group of the first appellant.

4. When dependency compensation is recalculated fixing the monthly income of the deceased at Rs. 3,000/- adopting the multiplier 14 and after deducting one half of the amount (See the principles laid down by the Apex Court in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*,) in consideration of the personal expenses what the deceased would have incurred had he been alive, it would come to Rs. 2,73,000/-. The Tribunal awarded a sum of Rs. 2,56,000/- under head, loss of dependency. So the appellants will become eligible to get an additional sum of Rs. 17,000/- towards compensation for loss of dependency.

5. We notice that towards loss of estate, no amount was awarded by the Tribunal. We award Rs. 5,000/- on that count.

6. Admittedly the deceased died on the next day while undergoing treatment in the hospital. Towards compensation for pain and suffering, we are of the view that some more amount has to be awarded. Hence, we are awarding additional sum of Rs. 10,000/- towards pain and suffering.

7. Towards funeral expenses, Rs. 2000/- was awarded by the learned Tribunal, which according to the learned counsel for the appellant is low. We are awarding additional sum of Rs. 3,000/- on that count.

8. It is brought to our notice that the accident had occurred at Rajkot. The learned Tribunal has awarded only a sum of Rs. 5,000/- for transportation charges, though the appellants have produced bills for about Rs. 11000/-. Hence, we are awarding additional sum of Rs. 6,000/-- towards transportation charges.

9. Considering the age of the deceased as well as the age of the appellants who are the parents of the deceased, we are of the view that the compensation awarded towards love and affection is inadequate. Hence, we are awarding an additional sum of Rs. 20,000/- as compensation for loss of love and affection. Thus in total the appellants will become entitled to receive an additional sum of

Rs. 61,000/- (Rupees sixty one thousand only) over and above what was awarded by the Tribunal. The total amount will carry interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay of 2004 days which was condoned by the Tribunal as per order dated 2nd February 2012 in C.M. Application No. 3138 of 2011. The appeal is allowed in part. The impugned award shall stand modified as above. No costs.