

(2012) 11 KL CK 0004
In the High Court Of Kerala
Case No : M.A.C.A. No. 713 of 2012

Rajitha, Ayana. R. Chithran (Represented by the Ist Appellant-Mother And Guardian) and Chithra. R. Chithran (Minor Represented by the Ist Appellant-Mother and Guardian) APPELLANT

Vs

Vijayachandan and The Divisional Manager, National Insurance Co. Ltd. RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Citation : (2012) 11 KL CK 0004

Hon'ble Judges : M.L. Joseph Francis, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : B. Renjithkumar, Sri. T. Pradeep kumar and Sri. M.S. Rakesh Sharma, for the Appellant; Lal George, for R3, for the Respondent

Judgement

Joseph Francis J.

1. This appeal is filed by the petitioners 3, 4 and 5 in O.P.(M.V.) No. 735 of 2012 on the file of M.A.C.T., Mavelikara. The case of the petitioners in O.P.(M.V.) is briefly as follows. The accident occurred on 22.9.2001 near Mutuhukulam in Karthikapally - Kayamkulam road when a scooter bearing reg. no. KL-4B/1375 driven by the first respondent in a rash and negligent manner from north to south hit on a bicycle due to which the deceased Chithrabhanu who was a pillion rider on the scooter sustained injuries and thereafter succumbed to the injuries on 25.9.2001. Second respondent was the owner of the scooter and third respondent was the insurer. The first petitioner is the father, second petitioner is the mother, third petitioner is the wife and petitioners 4 and 5 are the minor children of the deceased Chithrabhanu. They claimed Rs. 6,39,000/- as compensation.

2. Respondents 1 and 2 remained ex-parte. Third respondent filed written statement admitting the policy of the scooter and contended that the accident was not due to the negligence of the first respondent and that the compensation

claimed is excessive. Before the Claims Tribunal PW 1 was examined and Exts. A1 to 13 were marked.

3. The learned Claims Tribunal on considering the evidence on record found that the accident was due to the rash and negligent driving of the first respondent and awarded a compensation of Rs. 3,72,500/- to the petitioners together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation from respondents 1 to 3 and the third respondent was directed to deposit the amount as the insurer. The compensation awarded was ordered to be divided among the petitioners in the ratio 10:10:20:30:30. Being dissatisfied with the quantum of compensation awarded the petitioners 3, 4 and 5 alone filed this appeal.

4. Heard learned counsel for the appellants and learned counsel for the Insurance Company. Learned counsel for the appellants submitted that the compensation awarded under various heads is on the lower side and that the appellants are entitled to get enhanced compensation. Learned counsel for the appellants further submitted that the second appellant who is the elder minor daughter of Chithrabhanu is a mentally retarded girl having 70% disability as proved by Ext. A8 disability certificate. Learned counsel for the Insurance Company supported the award.

5. The Claims Tribunal awarded compensation under various heads as follows:

According to the appellants the deceased was a Manager in a ration shop and he was earning a monthly income of Rs. 5,000/-. But the Claims Tribunal fixed the monthly income of the deceased as Rs. 3,000/- which according to us is on the lower side and we fix his monthly income as Rs. 4,000/-. The deceased was aged 30 years at the time of accident and therefore the Claims Tribunal rightly took 16 as the suitable multiplier. In the decision reported in *Sarla Verma v. Delhi Transport Corporation* (2010 (2) KLT 802 SC), it was held that where the deceased was married, the deduction towards personal and living expenses of the deceased should be "where the number of dependent family members is 4 to 6. In the present case the number of the dependent family members is 5 and therefore" need be deducted towards personal and living expenses of the deceased. Calculating on that basis the appellants are entitled to get Rs. 5,76,000/- towards compensation for loss of dependency ($4000 \times 12 \times 16 \times \frac{3}{4}$) in place of Rs. 3,84,000/- awarded by the Tribunal. Due to the death of Chithrabhanu the minor appellants lost love and affection of their father. Therefore we award Rs. 20,000/- as compensation for loss love and affection. Thus in total the appellants are entitled to get Rs. 2,12,000/- as additional compensation.

Accordingly this appeal is allowed in part and the appellants are allowed to realise Rs. 2,12,000/- as additional compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation from respondents and the third respondent is directed to deposit the amount within

three months from this date. The additional compensation shall be divided equally among the appellants. There is no order as to costs.