
(2013) 02 KL CK 0004

In the High Court Of Kerala

Case No : Regular First Appeal No's. 429 and 442 of 2004

Ratnamma and Others

APPELLANT

Vs

KSEB and Others

RESPONDENT

Date of Decision : 21-02-2013

Acts Referred:

Citation : (2013) 1 KHC 826 : (2013) 2 KLJ 439

Hon'ble Judges : Thottathil B. Radhakrishnan, J; A.V. Ramakrishna Pillal, J

Bench : Division Bench

Advocate : A.S.P. Kurup and Sadchith P. Kurup, for the Appellant; P. Santhalingam, Sadasivan Nair and S. Sharan, Standing Counsels, KSEB, for the Respondent

Judgement

A.V. Ramakrishna Pillal, J.—The adequacy of compensation decreed in favour of the plaintiffs by the Principal Sub Court, Alappuzha, by a common judgment in two suits, viz. OS Nos. 32 and 46 of 2001 after a joint trial, is under challenge in these appeals. These suits were filed by the appellants, who are the legal representatives of two victims by name Louis and Sivaraman, who met with their death by electrocution at 5 a.m. On 27/02/2000. They were permitted to sue as indigent persons. RFA No. 442 of 2004 arises out of the decree in OS No. 32 of 2001 filed by the widow and two minor daughters of Louis aged 39 years, a fish vendor by avocation and RFA No. 429 of 2004 arises out of the decree in OS No. 46 of 2001 filed by the widow, daughter and sons of Sivaraman aged 53? years, who was a casual labourer in a toddy shop.

2. While the appellants in RFA No. 442 of 2004 had claimed a sum of Rs. 5 lakhs as compensation, the appellants in RFA No. 429 of 2004 had claimed a sum of Rs. 2.5 lakhs as compensation. In both the suits interest @ 12% per annum were also claimed.

3. The common case of the appellants is that deceased Sivaraman and Louis were electrocuted on account of the sagging of an 11 KV line, which was not visible to the victims. The appellants would allege that the unfortunate incident

occurred only on account of the negligence of the respondent Board in not maintaining the electric line properly.

4. The respondent Board resisted the suits contending that there was no negligence on their part. They also challenged the age, the income of the deceased as well as the amount of compensation claimed. However, they had paid a sum of Rs. 50,000/- each as ex gratia to the appellants.

5. The Trial Court, after raising separate issues in both the suits, allowed joint trial of the suits.

6. The appellants in RFA No. 442 of 2004 (plaintiffs in OS No. 32 of 2001) were granted a decree for realisation of a sum of Rs. 50,000/- together with interest at the rate of 9% per annum from the date of the decree i.e. 10/04/2003 till realisation. This was after offsetting the sum of Rs. 50,000/- which was paid as ex gratia. After deducting the amount paid as ex gratia, the appellants in RFA No. 429 of 2004 were awarded a sum of Rs. 64,000/- as compensation with interest at the same rate. Dissatisfied with the quantum of compensation, these appeals have been preferred.

7. Arguments have been heard and the records were perused.

8. The learned counsel for the appellants in both cases would submit that the method of calculation of income of the victims by the Court below is incorrect, since the Court below drew inference from a case reported in *The Kerala State Electricity Board Vs. K.V. Bhaskaran Nair, Parukutty Amma Nair, K.B. Aravindakshan Nair, K.B. Vijayan, K.B. Venugopal, K.B. Ponnamma and K.B. Pankajakshi*, which arose out of an incident occurred on 29/06/1990 i.e. about ten years before the incident in the present case. In that case, the income of the bus cleaner was fixed as Rs. 100/- per day. It was further pointed out that the multiplier adopted in both the cases for arriving at the compensation for loss of dependency is too low. The further argument was that no amount was granted for loss of consortium, loss of love and affection, loss of estate etc. It was further submitted that interest was granted only from the date of the decree.

9. The learned counsel for the respondent Board, per contra, justified the award and contended that there is no scope for interference by this Court.

10. On going through the method of calculation adopted by the Court below, we could notice certain infirmities. Generally compensation is awarded in such cases under the following heads:

- a) Loss of dependency
- b) Pain and suffering (depending upon the fact whether the death was instantaneous or subsequent)
- c) Funeral expenses
- d) Loss of consortium (if the deceased is survived by the spouse)

e) Loss of love and affection (if the deceased is survived by children)

f) Loss of estate

The rules for calculating damages in fatal accidents are set out in Winfield on Torts (7th Edition at pp. 135 & 136) as follows:

The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum of basic figure which will generally be turned into a lump sum by taking a number of years' purchase. That sum, however, has to be taxed down by having regard to the uncertainties, for instance, that his widow might have again married and thus ceased to be dependent and other like matters, speculation and doubt. The number of years' purchase is left fluid; from 12 to 15 has been quite a common multiple in the case of a healthy man, and the number should not be materially reduced by reason of the hazardous nature of the occupation of the deceased. These principles are however only appropriate where the deceased was the bread-winner of the family. Obviously they cannot be applied, for example, where the claim is in respect of mere expectation of pecuniary benefit from the deceased or where the deceased's contribution to the family was in kind and not in cash.

11. In both the cases the deceased were casual employees and they were the bread winners of the family. As rightly pointed out by the learned counsel for the appellants the Trial Court failed to take note of the principles stated above. Though some documents were produced by the appellants before the Trial Court for proving the income of the deceased, the Trial Court was not inclined to accept the same for genuine reasons. In the absence of convincing evidence, regarding the exact income of the deceased, a notional income has to be fixed, for arriving at the compensation for loss of dependency. This can be done taking into account the then social conditions, the age of the deceased, the nature of their avocation etc. We do notice that the incident was in the year 2000.

12. Louis, of whom the appellants in RFA No. 442 of 2004 are the legal heirs, was aged 39 years, as evident from Ext. A7 school certificate. He was a fish vendor, according to the appellants. This fact is not disputed. Sivaraman, of whom the appellants in RFA No. 429 of 2004 are the legal heirs, was 53? years and he was employed on daily wages in a toddy shop. Regarding this also, there is no serious challenge. Considering the age as well as the avocation, it is only reasonable to presume that the deceased might have earned at least Rs. 2500/- per month by engaging themselves in any job.

13. As the number of dependents of the deceased in both the cases are less than five, 1/3rd of the income could be deducted in each case, in consideration of the expenses which the deceased would have incurred had they been alive. That means, the appellants in both the cases would have been benefited at the rate of

Rs. 20,000/- per year, had the deceased been alive. In other words, Rs. 20,000/- can be safely adopted as the multiplicand in both the cases.

14. With this in mind, now, we will proceed to quantify the amount of compensation payable in each case.

RFA No. 442/2004 (arising out of the death of Louis)

i) Louis was 39 years old at the time of the accident. It is only reasonable to hold that the appellants, who are the legal representatives, could have been benefited at least for another 15 years had the deceased been alive. The respondents do not have a case that he was not healthy. Thus, we find that the compensation payable for loss of dependency is Rs. 3 lakhs (Rs. 20,000/- x 15). We grant that amount.

ii) The widow was aged only 31 years at the time of the accident. The respondents have no case that she remarried. Considering her age at the time of the death of her husband, we are of the view that a sum of Rs. 25,000/- has to be granted as compensation for loss of consortium. We do so.

iii) The deceased is survived by two minor daughters also. We are of the view that Rs. 20,000/- each can be granted to the minor daughters towards loss of love and affection, as they lost their father at a time when his care and protection was most needed. Thus, we grant a sum of Rs. 40,000/- (Rs. 20,000/- x 2) towards compensation for loss of love and affection.

iv) Towards loss of estate, we grant a sum of Rs. 5,000/-.

v) As rightly observed by the Trial Court, towards funeral expenses, Rs. 2000/- can be granted and we grant the said sum.

vi) Though the death was instantaneous, taking into account the tragic nature of the incident, we grant Rs. 5,000/- as compensation for pain and suffering. Thus, we find that the appellants in RFA No. 442 of 2004, who are the legal heirs of deceased Louis are entitled to get a sum of Rs. 3,77,000/-. The aforesaid amount shall stand reduced by Rs. 50,000/- which has been given to the appellants as ex gratia. Thus, the net amount of compensation payable is Rs. 3,27,000/-.

RFA No. 429/2004 (arising out of the death of Sivaraman)

i) Sivaraman was aged 53? years old. Presumably the appellants, who are the legal representatives, would have been benefited for another period of 10 years, had the deceased been alive. The respondent Board has no case that the deceased was unhealthy. Thus, we find that the compensation payable to the appellants under the head loss of dependency is Rs. 2 lakhs (Rs. 20,000/- x 10). We grant that amount.

ii) As rightly awarded by the Trial Court, we grant Rs. 2,000/- towards funeral expenses.

iii) Taking into account the tragic nature of the death, we award Rs. 5,000/- towards pain and suffering, in this case also.

iv) In this case, the first plaintiff, who is the widow, was 47 years old at the time of the incident. She did not remarry. Bearing these aspects in mind, we grant a sum of Rs. 10,000/- to her towards loss of consortium.

v) The deceased is survived by one daughter and two sons. They had already attained majority on the date of the incident. We grant a sum of Rs. 5,000/- each (Rs. 5,000/- x 3 : Rs. 15,000/-) towards loss of love and affection, to them.

Thus, in total, the appellants in RFA No. 429 of 2004 are entitled to get an amount of Rs. 2,32,000/-. The aforesaid amount shall stand reduced by Rs. 50,000/- which has been paid to the appellants as ex gratia. Thus, the net amount of compensation payable in this case is Rs. 1,82,000/-.

In the result,

a) Both the appeals are allowed.

b) The decree in OS No. 32 of 2001 is modified. The appellants in RFA No. 442 of 2004 are granted a decree of Rs. 3,27,000/- together with interest at the rate of 9% per annum from the date of the suit till realisation.

(c) The decree in OS No. 46 of 2001 is modified. The appellants in RFA No. 429 of 2004 are granted a decree of Rs. 1,82,000/- together with interest at 9% per annum from the date of the decree till realisation.

(d) The appellants in both the appeals are entitled to receive the costs of the original suit as well as the appeal.

(e) The appellants belong to the marginalised and economically challenged sector. Having regard to the totality of the facts and circumstances, we are of the view that it would be a travesty of justice to compel them to pay court-fee for this litigation, particular regard being had to Article 39A of the Constitution. We, therefore, exercise discretionary jurisdiction of this Court under Order XXIII Rule 11 CPC as enunciated by the Division Bench in Joseph Vs. Kerala State Electricity Board, and order that no court-fee is payable by the appellants either in these appeals or in the suits from which these appeals arose. Hence, there shall be no recovery of court-fee from the appellants either in relation to these appeals or as regards the suits from which these appeals arose. Consequently, the liability of the respondent Board to pay costs shall be confined to Advocates' fee and other expenses.

(f) The respondent Board shall pay the decreed amount, together with interest and costs, as specified above, to the respective appellants within two months from today, failing which the appellants shall have the liberty to get the decree executed against the respondent Board, in accordance with law.