
(2021) 08 KL CK 0027
In the High Court Of Kerala
Case No : MACA NO. 2249 Of 2010

Shanmughan, S/O.Kanjiraparambil Velu	APPELLANT
Vs	
Mohammed Ismail, S/O.Hydrose	RESPONDENT

Date of Decision : 02-08-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2021) 08 KL CK 0027

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : P.V.Baby, A.N.Santhosh, P.A.Reziya

Final Decision : Allowed

Judgement

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C.S.Dias,J",,,

1. The appellants were the petitioners in OP(MV) No.144 of 2006 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda. The respondents in",,,

the appeal were the respondents before the Tribunal.,,,

2. The appellants had filed a claim petition u/s.166 of the Motor Vehicles Act, 1988 claiming compensation on account of the death of Sivan @ Siva",,,

Kumar (deceased), the son of the appellants 1 and 2 and the brother of the 3rd appellant. The appellants had averred in the claim petition that: on",,,

14.12.2005 while the deceased was riding in his motorcycle through the Edamuttam-Thriprayar road, a bus bearing Reg.No.KL-8/F 4257 (bus) driven",,,

by the 2nd respondent in a rash and negligent manner hit the motorcycle. The appellant sustained fatal injuries and lost his life of the same day. The,,

bus was driven by the 2nd respondent in a rash and negligent manner. The 1st

respondent was the owner and the 4th respondent was the insured of,,
the bus. The deceased was a driver by profession and earning a monthly income
of Rs.6,000/-. He was the bread winner of the family and the",,,
appellants were dependent on him. Hence, the appellants claimed a total
compensation of Rs.8,00,000/- from the respondents.",,,
3. The respondents 1, 2 and 4 did not contest the proceeding and were set ex
parte.",,,
4. The 3rd respondent filed a written statement admitting that the bus had a
valid insurance coverage. Nevertheless, it was contended that the",,,
accident occurred on account of the negligence of the deceased.,,
5. The appellants produced and marked Exts.A1 to A5 in evidence. The 3rd
respondent produced Ext.B1 insurance policy and marked it in evidence.,,
6. The Tribunal, after analysing the pleadings and materials on record, allowed
the claim petition in part, by permitting the appellants to realise an",,,
amount of Rs.2,03,000/- with interest and cost from the 3rd respondent.",,,
7. Dissatisfied with the quantum of compensation awarded by the Tribunal, the
petitioners are in appeal.",,,
8. Heard, Sri.P.V.Baby, the learned counsel appearing for the appellants/
petitioners and Smt.P.A.Raziya, the learned counsel appearing for the 3rd",,,
respondent/ Insurer.,,
9. The sole question that emerges for consideration in this appeal is whether the
quantum of compensation awarded by the Tribunal is reasonable and,,
just.,,
10. Ext.A2 charge sheet filed by the Valappad Police in Crime No.443 of 2005
proves that the accident occurred on account of the negligence of the,,
2nd respondent. Admittedly, the 1st respondent was the owner, 4th respondent
was the insured and the 3rd respondent was the insurer of the bus.",,,
Therefore, it is the 3rd respondent, who is liable to indemnify the liability of the
the respondents 2 and 4.",,,
11. The appellants had claimed that the deceased was a driver by profession and
earning a monthly income of Rs.6,000/-. The Tribunal fixed the",,,
notional income of the deceased at Rs.2,500/- per month.",,,
12. In Â Ramachandrappa Â vs. Â Manager, Â Royal Sundaram Alliance Insurance
Company Ltd .[, (2011) 13 SCC 236], the Hon'ble Supreme",,,

Court has fixed the notional income of a Coolie Worker in the year 2004 at Rs.4,500/- per month.",,

Notional Income,,

13. Following the ratio in the aforecited decision and considering the fact that the accident occurred in the year 2005, I fix the notional income of the",,

deceased at Rs.5,000/- per month.",,

Multiplier,,

14. The deceased was aged 31 years on the date of the accident/date of his death. Therefore, in view of the law laid down in Sarala Verma v. Delhi",,

Transport Corporation [(2010) 2 KLT 802 SC], the relevant multiplier is 16",,

Personal living expenses,,

15. It is an undisputed fact that the deceased was a bachelor. In light of the law laid down in Sarala Verma (supra), one half of the total compensation",,

towards loss of dependency has to be deducted towards the personal living expenses of the deceased.,,

Future prospects,,

16. In Sarala Verma and National Insurance Company Ltd., v. Pranay Sethi [(2017) 16 SCC 680], the Hon'ble Supreme Court has held that",,

the dependents of the deceased are entitled for future prospect at 40% if the deceased is aged 31 years. Accordingly, I hold that the appellants are",,

entitled for future prospects at 40%.,,

Loss due to dependency,,

17. Taking into account the above factors, namely the notional income of the deceased at Rs.5,000/- per month, the multiplier at 16, future",,

prospects at 40% and after deducting 50% of the total compensation for loss of dependency towards personal living expenses of the deceased, I hold",,

that the appellants are entitled for compensation for loss of dependency at Rs.6,72,000/- instead of Rs.1,65,000/- awarded by the Tribunal.",,

Conventional heads of compensation,,

18. In Clause (viii) of paragraph 61 of Pranay Sethi (supra), the Hon'ble Supreme Court has held that the dependents of the deceased are entitled for",,

compensation under the conventional heads namely; loss of estate, loss of consortium and funeral expenses at Rs. 15,000/-, 40,000/- and 15,000/-",,

respectively. In the said circumstances, I enhance the compensation under the head 'funeral expenses' by a further amount of Rs.11,000/-and award",,,

an amount of Rs.15,000/- as compensation for 'loss of estate'. With respect to compensation for loss of consortium, taking into account that the",,,

appellants 1 and 2 were the parents of the deceased, I award an amount of Rs.80,000/- towards loss of consortium.",,

Loss of Love and affection and Pain and Sufferings,,

19. It is seen that the Tribunal has awarded an amount of Rs.25,000/- under the head loss of love and affection. In view of the law laid down by this",,,

Head of claim,"Amount Awarded by

the Tribunal (in Rs.)","Amounts modified

and recalculated by

this Court

Transportation expenses,"2,000/-","2,000/-

Pain and sufferings,"7,000/-",-

Funeral expenses,"4,000/-",15000/-

Loss of estate,-,"15,000/-

Love and affection,"25,000/-",-

Loss of consortium,-,"80,000/-

Loss of dependency,"1,65,000/-","6,72,000/-

Total,"2,03,000/-","7,84,000/-