
(1986) 09 KL CK 0009
In the High Court Of Kerala
Case No : M.F.A. No. 131 of 1986

The New India Assurance Co. Ltd.

APPELLANT

Vs

Kayicha Umma and Others

RESPONDENT

Date of Decision : 30-09-1986

Acts Referred:

Citation : (1986) 09 KL CK 0009

Hon'ble Judges : T. Kochu Thommen, J; K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : K. Lakshmanan Pillai and P.V.R. Kaimal, for the Appellant; P.K. Nair and P.K. Sureshkumar for 1st Respondent, T.A. Ramdas and Divakaran Pillai for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Kochu Thommen, J.—The Appellant is the New India Assurance Company Ltd. It challenges the award made by the Motor Accidents Claims Tribunal, Kozhikode in M.A.C. No. 240 of 1982. The Tribunal held that Respondents 1 to 3 before the Tribunal, namely, the driver and the owner of the vehicle which caused the accident and the insurer were liable to pay the legal representative of the deceased a sum of Rs. 50,000 with interest and costs as compensation for the death of her minor child.

2. The claimant submitted before the Tribunal that her daughter aged 8 years was knocked down by the bus at about 4.30 p.m. on 28th September 1981 while she was standing by the side of a road. She was rushed to the Medical College Hospital, but there she breathed her last. The claimant submitted that her daughter was extremely bright in her studies and obtained the first rank in all her examinations. She was smart, energetic and healthy. She helped her mother in her household work, and was a great solace to her, especially because the mother was separated from her father. She would have completed her studies with great success and would have been of immense help to her mother in the future. The mother lost the benefit of her daughter's company and assistance as

a result of her untimely death caused by the negligence of the driver of the bus for which the owner was vicariously liable and the insurer was liable in terms of the policy of insurance. The Tribunal found that all the three persons were jointly and severally liable to compensate the mother of the deceased in the sum of Rs. 50,000 together with interest and costs.

3. The appellant's counsel submits that the Tribunal ignored the compromise reached by the parties before the award was made. The parties agreed, counsel points out, that the claim would be settled in the sum of Rs. 9,500. We see no evidence to support this contention. There is no reference in the award to any compromise. There is no evidence to show that the claimant had agreed to accept a smaller sum than what she had claimed. In the absence of any reference to a compromise in the award, we take it that whatever was the attempt made by the Appellant or the owner and driver of the bus to effect a compromise, no compromise had been agreed to by the claimant.

4. The Tribunal considered the evidence on record. It took into account the fact that the child was 8 years old, but was extremely healthy and intelligent, and, but for the accident, would have in all probability had a normal, healthy and prosperous life, judged by her success in the school. Concerning the pecuniary loss of the mother sustained as a result of the death of her child, the Tribunal determined the compensation in the sum of Rs. 50,000.

5. What is payable in such circumstances has to be calculated on a reasonable expectation of the pecuniary benefit which the beneficiaries would have derived had not the death occurred. The beneficiaries have to prove that by the death of the person they lost a reasonable probability of pecuniary advantage. What is reasonable is a question of fact which varies from case to case and has to be determined with reference to the evidence on record. In the absence of statutory guidelines, the Court has to make an estimate of the pecuniary loss suffered by the members of the family of the deceased. Greater value is attributed to life while the purchasing power of the rupee has considerably diminished. The Court has to evaluate the pecuniary loss resulting from death on the basis of a proper appreciation of the relevant circumstances and hard realities. In doing so, the Court must take into account all reasonable probabilities of future benefits. In other words, the damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value *Velayudhanachari v. K.S.R.T.C.* 1977 KLT 836. We have no reason to think that the Tribunal was not justified, on the basis of evidence on record, in coming to the conclusion which it did. We see no merit in this appeal. The appeal is dismissed with costs.