
(2022) 06 KL CK 0166
In the High Court Of Kerala
Case No : MACA No. 1378 Of 2012

Thomas S/o Late Antony

APPELLANT

Vs

Arunraj S/o Sukumaran

RESPONDENT

Date of Decision : 15-06-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2022) 06 KL CK 0166

Hon'ble Judges : M.R.Anitha, J

Bench : Single Bench

Advocate : Sheji P.Abraham, O.K.Muraleedharan, S. Jayasree

Final Decision : Allowed

Judgement

M.R.Anitha, J

1. This appeal has been filed against the award passed in O.P.M.V No.372/2010 on the file of Motor Accidents Claims Tribunal, Ottappalam (in short 'Tribunal'). The claim petition has been filed under Section 166 of Motor Vehicles Act, 1988 (In short the Act) out of the death of Mary, the mother of the appellants in a motor accident occurred on 03.04.2010 at about 4.30 pm at Enamakal due to hit by a motor cycle bearing Registration No.KL-46 4395 driven by 1st respondent. It is alleged that the accident happened due to the rash and negligent riding of the motor cycle by the 1st respondent. Immediately she was taken to West Fort Hospital, Thrissur, while undergoing treatment she succumbed to the injuries on 06.06.2010. 1st respondent is the registered owner cum rider of the motor cycle and 2nd respondent is the insurer. A total compensation of Rs.4,00,000/- has been claimed.

2. Before the Tribunal, 2nd respondent filed written statement denying the rashness and negligence attributed against the rider of the motor cycle. Policy coverage with respect to the offending vehicle is admitted.

3. Exts. A1 to A12 marked from the side of the appellants. There is no oral

evidence from either side. On evaluating the pleadings as well as documents, Tribunal found that 1st respondent is responsible for the accident and hence, 2nd respondent is held liable to indemnify the insured. A total compensation of Rs.1,10,800/- has been awarded by the Tribunal with interest at 7% per annum.

4. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants approach this Court in appeal for various grounds stated in the memorandum of appeal. Adv. S. Jayasree appeared on behalf of the 2nd respondent. Notice as against 1st respondent is dispensed with at the risk of the appellants. Lower court records were called for and perused.

5. Heard the learned counsel for the appellants as well as the learned counsel for the 2nd respondent.

6. The only challenge of the appellants is with regard to the award of compensation under the heads of loss of dependency, loss of estate and funeral expenses.

7. The learned Standing Counsel for the 2nd respondent/insurer on the other hand contended that just and reasonable compensation has already been awarded by the Tribunal and no interference is called for in this appeal.

8. In *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.* [2010 (2) KLT 802 (SC)] the Apex Court laid down the guidelines for determination of quantum of compensation in case of death in motor accident. It has been held that compensation awarded should be just compensation and that the compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. The assessment of compensation though involve certain hypothetical considerations, should nevertheless be objective and justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication and fairness and uniformity in decision making process and the decisions. Though it is not possible to have a mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range.

9. In *National Insurance Company Ltd. v. Pranay Sethi* [2017 (4) KLT 662 (SC)] a Constitution Bench of the Apex Court dealt with the concept of 'just compensation' and held that the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The concept of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. It is also emphasized that the compensation should not be a windfall nor be a pittance.

10. In the present case, the deceased was 78 years old home maker and the appellants are son and daughters of the deceased. In this context, the learned

counsel for the appellants brought my attention to Joseph v. Faisal 2015 (1) KLT 334 wherein Division Bench of this Court taken the annual income of 72 year old mother notionally as Rs.20,000/- without reducing anything towards personal expenses , multiplier of '5' was applied and awarded an amount of Rs.1,00,000/- towards loss of dependency. In that decision, Lata Wadhwa and Others v. State of Bihar and others (2001) 8 SCC 197 has also been quoted. In para No.10 of Lata Wadhwa and Others (supra), it has been held that value of service rendered by elderly ladies are concerned in the age group of 62-72 has been taken as Rs.20,000/- per annum. That has been followed by the Division Bench of this Court in Joseph v. (supra), and it has been held that service rendered by the mother have to be quantified for awarding just compensation .

11. However in the present case the deceased was 78 years old .Hence same yardstick as in Joseph v. faisal can not be adopted. In hafizal begum V Md.Kram Heque and others 2007 KHC 5596, it has been held that petitioners though were not financially dependent even then they are entitled to compensation being the legal heirs of the deceased. In National Insurance Co. Ltd V Muneer 2003 KHC 17, it has been held that legal heirs should be paid compensation which would have been payable under section 163A in the event of claim being filed under section 166 of the Act. In the present case, claimants even claimed only Rs.50000/- towards dependency. Hence I find it reasonable to fix annual income as Rs.12000/-. Applying multiplier of 5, compensation towards dependency would be Rs.60000/Tribunal already awarded Rs.25,000/- towards loss of dependency. After deducting that amount, appellants are entitled to get Rs.35,000/-towards loss of dependency.

12. The next contention of the learned counsel is with regard to the enhancement of compensation under conventional heads.on conventional heads. Appellants are aged son and daughters of the deceased. Hence they are not entitled to get any amount towards consortium.

13. As per pranoy Sethi appellants are further entitled to get 16500/each towards loss of estate and funeral expenses. Tribunal awarded Rs.5,000/- each towards funeral expenses and loss of estate. So, claimants are further entitled to get Rs.11,500/- each (16,500-5000) towards funeral expenses and loss of estate.

14. So in total the appellants are entitled to get total enhanced compensation of Rs.58,000/- (35,000+11,500+11,500).

15. In the result, the appellants are allowed to realize enhanced compensation of Rs.58,000/- which will carry interest at the rate of 6.5% per annum from the date of petition, till realization. The second respondent insurer shall satisfy the compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of a certified copy of this judgment.

16. The appeal has been filed with a petition to condone delay of 124 days. While condoning the delay by order dated 17.07.2012 in CMA.No.1643/2012, it was made clear that, in case any enhancement of compensation is granted, the

claimant will not be entitled to claim interest for the above said period. Hence, interest for the period of 124 days is excluded Appellants/claimants shall provide their Bank Account details (attested copy of the relevant page of the Bank Passbook having details of the Bank Account Number and IFSC Code of the branch) before the Tribunal, with copy to the standing counsel for the insurer, within one month from the date of receipt of a certified copy of this judgment.