(2006) 12 KL CK 0031

In the High Court Of Kerala

United India Insurance Co. Ltd. APPELLANT

Vs

Bindu and Others RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Citation : (2007) 1 ACC 688 : (2007) 1 ILR (Ker) 226 : (2007) 1 KLJ 253

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Judgement

M.N. Krishnan, J.—This appeal is preferred against the award passed by the Claims Tribunal in O.P. (M.V) No 780 of 1999. Claimants are the widow, daughter and mother of the deceased who died in a road accident. He was employed having a salary of Rs 7,427. Tribunal after taking into consideration the entire materials awarded a compensation of Rs. 10,61,000 with 9% interest. It is against that decision the present appeal is filed by the Insurance Company.

2. Heard both sides.

3. Learned Counsel for the Insurance Company would contend that the multiplier taken is not correct and that since the wife had got employment under the compassionate scheme that has to be taken into account while fixing the compensation. Deceased was employed as Reprographic Assistant in the Cochin University having a monthly salary of Rs. 7,427. Tribunal deducted one-third for his personal expenses and fixed the dependency at Rs. 5,000 and applied the multiplier of 17 and awarded the compensation of Rs. 10,20,000 for loss of dependency. Learned Counsel for the Insurance Company would contend that since the wife had got employment in the Cochin University certainly that has to be taken into consideration and the amount to be deducted. This position has been considered and decided by a Bench of this Court in Geethakumari v. Rubber Board 1994 (1) KLT 674. From the above decision it is clear that just because the wife had got employment under the compassionate scheme, compensation is not liable to be reduced. Compassionate employment is given under the scheme of the employer and the quantum of compensation has nothing to do with the same

and it is altogether on a different ground the said thing is given. It has also to be remembered that even if husband dies a natural death wife would be entitled to employment under the compassionate scheme, if the scheme so provides. Learned Counsel had invited our attention to the decision of the Apex Court in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, . In the said decision Apex Court observed that the actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing On the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death. It was only laying down the general principles and the Court was not considering this point at all and it was only considering about the amount when there is interest payable on the same by way of fixing the amount. So the said decision does not advance the case of the Insurance Company. Therefore, we hold that as held by this Court in the decision reported in Geethakumari ''s case (supra), just because the wife had got employment under the compassionate scheme no amount of compensation has to be deducted. A Division Bench of the Andhra Pradesh High Court in A.P.S.R.T.C., Hyderabad v. G. Jana Bal 2 (2001) ACC 716 : 2001 (3) TAC 148 (AP), held that The mere fact of the wife of deceased gainfully employed on compassionate grounds cannot be aground for awarding less compensation though the claimants are entitled for more compensation. Similarly, a Division Bench of Gauhati High Court in Kanika Hazarika and Ors. v. Sreeram Barthkumar and Ors. 2003 ACJ 159, held that deduction on account of the salary received by the widow on an employment given by the bank where the deceased as working should not be taken into consideration for fixing the amount. Thus those decisions also support the view taken by us.

4. The next point to be considered is regarding the multiplier to be adopted there. Wife was aged 26 years at the time of death of the husband and child aged 2 years has also to be looked after by her, besides mother who was aged 52 years. At the most crucial point of the life, wife has lost her husband and she has to depend on so many others to look after the child and mother and applying the multiplier shown in the Schedule II of the Motor Vehicles Act, Tribunal has fixed it correctly at 17 and calculated the compensation. Therefore we do not find any mistake committed by the Tribunal in fixing the multiplier at 17. Besides the Tribunal has only awarded reasonable compensation under other heads thus totalling to Rs. 10,67,000. There is no error committed by the Tribunal and therefore the appeal is devoid of merits and is dismissed.

