
(2016) 05 KL CK 0006

In the High Court Of Kerala

Case No : M.A.C.A. No. 304 of 2008 (Against the award in O.P.M.V. 424 of 2005 of Motor Accidents Claims Tribunal, Thrissur Dated 11.04.2007)

Vahisa, Widow of Vijayan

APPELLANT

Vs

Smt. C.I. Lincy, W/o. Sunny

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Citation : (2016) AAC 1667 : (2017) ACJ 668

Hon'ble Judges : P.N. Ravindran and K. Ramakrishnan, JJ.

Bench : Division Bench

Advocate : Sri. T.C. Suresh Menon, Sri. Jibu P. Thomas and Sri.P.S. Appu, Advocates, for the Appellant; Sri. George Cherian (Thiruvalla), Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Ramakrishnan, J.—The claimants in O.P.(M.V.)No.424 of 2005 on the file of the Motor Accidents Claims Tribunal, Thrissur are the appellants herein. The claimants filed the application for compensation for the death of their bread winner Vijayan, who died in a motor vehicle accident on 15.10.2004 at 4.30 am while he was riding his motor cycle through Paliakkara-Amballur public road. When he reached near the Manali bridge, a mini lorry with registration No.KL-8/B-6537 driven by the second respondent, owned by the first respondent and insured with the third respondent came at a high speed and in a negligent manner and hit against the motor cycle driven by the deceased. In that accident he sustained serious injuries and later succumbed to the injuries. According to the claimants, the accident occurred due to the negligent driving of the mini lorry by the second respondent. The claimants are the wife, child and parents of the deceased. The deceased was working as an AC Mechanic in the Sultanate of Oman getting a monthly income of Rs. 25,000/-. They claimed a total compensation of Rs. 27,62,500/- but restricted the claim to Rs. 25,00,000/-.

2. Respondents 1 and 2 remained ex parte. The third respondent entered

appearance and filed a written statement admitting the insurance. According to them, the accident occurred due to the negligence of the deceased himself and not due to the negligence of the second respondent. The petition is bad for non-joinder of the owner and insurer of the motor cycle in which the deceased was travelling. They denied the age, occupation and income of the deceased and dependency of the petitioners. According to them, the amount claimed is excessive. They prayed for dismissal of the application.

3. No oral evidence was adduced on either side. Exts.A1 to A11 were marked on the side of the petitioners and Ext.B1 was marked on the side of the third respondent.

4. After considering the evidence on record, the tribunal found that the accident occurred due to the negligent driving of the mini lorry by the second respondent and awarded a total compensation of Rs.7,59,500/- under various heads as follows:

Heads

Amount Awarded

Expense for transportation

1,000

Damages to clothing

500

Expense for funeral

5,000

Compensation for pain and suffering

10,000

Compensation for loss of love and affection

15,000

Compensation for loss of dependency

6,48,000

Compensation for loss of estate

50,000

Compensation for loss of consortium

30,000

Total

7,59,500

The tribunal also held that respondents 1 to 3 are jointly and severally liable to pay the amount and directed the third respondent insurer to pay the amount on behalf of the insured. Dissatisfied with the quantum of compensation awarded, the present appeal has been preferred by the appellants/claimants before the tribunal.

5. Heard Sri.A.R. Nimod, learned counsel representing Sri.T.C. Suresh Menon, learned counsel appearing for the appellants and Sri.George Cherian, learned Senior counsel appearing for the third respondent.

6. The learned counsel appearing for the appellants submitted that the appellants have produced Exts.A9, A10 and A11 documents to prove the income of the deceased. But the court below has not taken note of the same. Those documents will go to show that he was working in the Sultanate of Oman as an AC Mechanic and getting a salary of Rs. 25,000/- per month. Further, no future prospects have been taken into consideration while awarding the amount under the head loss of dependency. Further the amount awarded under the head loss of consortium, loss of love and affection and funeral expenses are also on the lower side. According to him, the appellants are entitled to get enhancement on all heads.

7. On the other hand, learned counsel appearing for the insurance company submitted that as the deceased was aged 28 years, the tribunal was not justified in taking 18 as the multiplier and it should be 17 as per the decision in *Sarla Verma and Others v. Delhi Transport Corporation and Another* [(2009) 6 SCC 121]. Further, the amount awarded by the tribunal are just and proper and no interference is called for.

8. Since the finding regarding negligence has not been challenged by the respondents, we are not going into that aspect in this appeal. The case of the claimants was that the deceased was aged 28 years, working as an AC Mechanic in the Sultanate of Oman and getting a monthly income of Rs. 25,000/-. They have produced Exts.A8 and A11 to prove this fact. But those documents were not proved by examining the person who issued the same. Further, the employment in Gulf cannot be said to be of permanent nature. In such cases, the income said to have been earned by the deceased cannot be taken as income for that purpose and the income of a person of such qualification which he will earn in India alone can be taken into consideration for that purpose.

9. In the decision reported in *Valsamma v. Binu Jose* [2014 (1) KLT 10] this court has held that the income of a person in a foreign country which is not a permanent employment cannot be taken into consideration for the purpose of assessing compensation under the head loss of dependency and the income will have to be assessed in the context of Indian Standards of such person if he is employed will be getting in India. Considering the circumstances, the amount of Rs. 6,000/- fixed by the tribunal as his monthly income cannot be said to be low

and it is reasonable as well.

10. But at the same time the tribunal had not taken into consideration the future prospects for assessing compensation. In the decision reported in *Rajesh v. Rajbir Singh* [2013 (3) KLT 89 (SC)], the Supreme Court has held that even in a case where persons are not having any permanent income, future prospects will have to be taken into consideration and in the age group upto 30 years, future prospects has to be taken as 50%. Admittedly, the deceased was aged 28 years. As per the decision in *Sarla Verma and Others v. Delhi Transport Corporation and Another* [supra] the multiplier applicable to such age group is 17 and not 18 as taken by the tribunal. Further the dependents are four in number. So in view of the decision in *Sarla Verma and Others v. Delhi Transport Corporation and Another* [supra] the deduction for personal expenses will be one-fourth and not half as taken by the tribunal. If a recalculation is made on that basis, the appellants will be entitled to get an amount of Rs. 13,77,000/- [(Rs. 6,000 x 150%) x 12 x 17 x 75%]. After deducting Rs. 6,48,000/- awarded by the tribunal, the appellants will be entitled to get an additional amount of Rs. 7,29,000/- under the head loss of dependency and we are inclined to award that amount under that head.

11. The deceased was aged 28 years and his wife, the first appellant, was aged 26 years. She had lost the company of her husband for the remaining period and there is no possibility of remarriage as well, as she has a child of 3? months. In the decision reported in *Rajesh v. Rajbir Singh* [supra] the Supreme Court has held that in appropriate cases the compensation for loss of consortium should be not less than Rs. 1,00,000/-. The same principle has been applied by this court also in the decision reported in *Valsamma v. Binu Jose* [supra]. If that be the case, the amount of Rs. 30,000/- awarded by the tribunal under the head loss of consortium to the first appellant is less and we are enhancing the same to Rs. 1,00,000/- and thereby, the first appellant will be entitled to get an additional amount of Rs.70,000/- more under the head loss of consortium.

12. The tribunal had awarded only Rs. 15,000/- under the head loss of love and affection. In fact the child had lost his father at the young age of 3? months. He had lost love and affection and also upbringing of the father. So in the decision reported in *Rajesh v. Rajbir Singh* [supra], the Supreme Court has held that for love and affection an amount of Rs. 1,00,000/- will have to be awarded. So applying the principle and also considering the circumstances of the case, the amount of Rs. 15,000/- awarded by the tribunal is very less and as such, the appellants are entitled to get an amount of Rs. 1,00,000/- under the head loss of love and affection. Thereby, the second appellant will be entitled to get an additional amount of Rs. 85,000/- under the head loss of love and affection.

13. The tribunal has awarded only an amount of Rs. 5,000/- under the head funeral expenses. We are inclined to enhance the same to Rs. 10,000/-. Thereby, the appellants will be entitled to get an amount of Rs. 5,000/- more under that head. Though the counsel for the appellants vehemently argued for enhancement

under other heads, we are not inclined to enhance any amount under other heads as we are convinced that the amount awarded is just and proper.

14. In all, the appellants/claimants will be entitled to get an additional amount of Rs. 8,89,000/- over and above the compensation awarded by the tribunal, which the third respondent insurance company is liable to pay with 9% interest from the date of petition till payment. The additional compensation awarded can be shared between appellants 1 and 2 alone equally. The amount due to the second appellant shall be deposited in a nationalised bank till he attains majority with liberty for the first appellant to withdraw the periodical interest accrued for the maintenance of the child. Out of the amount due to the first appellant, 50% is permitted to be withdrawn by her and the balance amount shall be deposited for a period of three years in her name with liberty for her to withdraw the interest accrued subject to the right of the first appellant to apply for withdrawal of the amount if necessity arises. Three months' time is granted to the insurance company to deposit the amount.

15. With the above modification of the impugned award, the appeal is allowed in part and disposed of accordingly.