

Salin Vs. K.V.Vincent

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Court : Kerala

Decided On : Aug-12-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Salin

Respondent : K.V.Vincent

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY,THE 12TH DAY OF AUGUST 2013 21ST SRAVANA, 1935 MACA.No. 1210 of 2009 ()
----- AGAINST THE AWARD IN OPMV 2822 2001 of M.A.C.T.,ERNAKULAM DATED 19 03-2008 APPELLANT(S)/PETITIONER:
----- 1. SALIN, AGED 55 W/O.GEORGE, KELOTH HOUSE, PALLURUTHY, KONAM.

2. GEORGE, AGED 60 S/O.LATE JOSEPH, KELOTH HOUSE, PALLURUTHY, KONAM.

3. JESUS JOSE, AGED 32 S/O.GEORGE, KELOTH HOUSE, PALLURUTHY, KONAM.

4. LIJO GEORGE, AGED 30 S/O.GEORGE, KELOTH HOUSE, PALLURUTHY, KONAM. BY ADV. SRI.V.A.OMANAKUTTAN

RESPONDENT(S)/RESPONDENTS: ----- 1.
K.V.VINCENT, S/O.ITOOP VAREED, KOLATHUKUDY, HOUSE, AYYAMPUZHA,
ALUVA.

2. A.C.PAPPACHAN, AUTOKKARAN HOUSE,KOTTAMAM, NELEESWARAM.

3. THE NATIONAL INSURANCE CO.LTD,P.B.NO.24, MULLAPPALY
BUILDINGS, A.M.ROAD, PERUMBAVOOR. R1 & R2 BY ADV. SRI.DINESH
MATHEW J.MURICKEN R3 BY ADV. SRI.LAL GEORGE THIS MOTOR
ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 12-08-
2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: DG
S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

----- M.A.C.A.No.1210 of 2009
===== Dated this the 12th day of August 2013

JUDGMENT

The appellants are the parents and major brothers of deceased Sejo George, who was a bachelor. He died in an accident caused by the negligent driving of a vehicle owned and driven by respondents 1 and 2 and insured with the 3rd respondent. The appellants filed O.P.(M.V) No.2822/2001 before the Motor Accidents Claims Tribunal, Ernakulam claiming compensation for the death of Sejo George. The Tribunal, after finding negligence on the part of the driver of the vehicle awarded compensation under various as follows: Head of Claim Amount Transportation, hospitalisation, attendant 3000/- expenses, Extra nourishment & damage to clothing Medical expenses 43,500/- Loss of earnings 8,000/- Pain and suffering 20,000/- For discomforts & inconveniences 10,000/- Probable deduction in earning power 12,000/- Total 96,500/- M.A.C.A.No.1210 o

2. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants have filed this appeal seeking enhanced compensation.

2. The first contention raised by the appellants is that although, the appellants have produced Ext.A10 salary certificate from the employer of the deceased, certifying Rs.4,200/- as the monthly salary of the deceased, the Tribunal arbitrarily

fixed the income only as Rs.2,500/-. It is further submitted that no compensation has been awarded for loss of love and affection to the parents of the deceased.

3. We have heard the counsel for the insurance company also.

4. At the outset, we note that insofar as the appellants 3 and 4 are major siblings of deceased, Sejo George, they cannot be considered as dependants of the deceased. Therefore, only the parents are the deceased and the deceased was a bachelor. The accident was on 24.05.2001. Although, the appellants produced Ext.A10 salary certificate and examined PW1, licensee of the ration shop, where the deceased was stated to be working, the employer did not produce any statutory records to prove the salary paid by the M.A.C.A.No.1210 o

3. employer to the deceased. That being so, the salary certified in Ext.A10 certificate cannot be accepted as the monthly income of the deceased. That being so, in 2001, Rs.2,500 fixed as monthly income of a helper in a ration shop cannot be said to be on the lower side. Therefore, we are not inclined to interfere with the monthly income fixed by the Tribunal. But, we find that ,the Tribunal has fixed the multiplier based on the average age of the parents and took the same as 13. But, in Amrit Banu Shali Vs. National Insurance Company Limited and others 2012 ACJ 200.the Supreme Court has held that the selection of multiplier should be based on the age of the deceased. At the same time, since only the parents are the dependants, 50% of the income has to be reduced for the personal expenses of the deceased, inview of the decision in the Sarala Verma Vs. Delhi Transport Corporation [2010 (2) KLT 80.SC] Calculated thus, the compensation for the loss of dependency would be Rs.2,70,000/- $(2500 \times 12 \times 18/2)$ instead of Rs.2,64,000/-. We also find that, the Tribunal has not awarded any amount for loss of love and affection for the parents of the deceased. We fix Rs.15,000/- as compensation under this head. We are not inclined to interfere with the M.A.C.A.No.1210 o

4. compensation awarded under other heads. But, we find that the Tribunal has actually corrected the amount of loss of dependency as Rs. 2,60,000/-. Consequently under the head of loss of dependency, the appellants would be entitled to Rs.10,000/- over and above what has been awarded by the Tribunal. Consequently, the appellants are entitled to additional compensation of

Rs.25,400/- over and above what has been awarded by the tribunal. This amount would carry interest at the rate of 9% per annum from the date of claim petition till the date of payment. The 3rd respondent insurance company shall deposit that amount also within two months. With the above modification of the impugned award, the appeal is disposed of. sd/ S.SIRI JAGAN, JUDGE sd/ K.RAMAKRISHNAN, JUDGE jm/ \\ TRUE COPY \\ PA TO JUDGE

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