

Ambika Vs. Sunitha

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Court : Kerala

Decided On : Sep-27-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Ambika

Respondent : Sunitha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY,THE27H DAY OF SEPTEMBER20135TH ASWINA, 1935 MACA.No. 1773 of 2010 () ----- AGAINST THE AWARD IN OP(MV) 757/2005 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR ----- APPELLANT(S)/ORIGINAL PETITIONERS:

----- 1. AMBIKA,W/O.P.K.RAJAN, PONATH HOUSE, MUNAMBAM PALLIPORT PO, KUZHUPPILLY VILLAGE, KOCHI TALUK, ERNAKULAM DISTRICT.

2. SUNIL.P.R,S/O.LATE RAJAN,DO.DO.

3. SHEENA,P.R,W/O.UNNIKRISHNAN,DO. DO.

4. MANOJ.P.RAJAN,S/O.RAJAN .DO. DO. BY ADV. SRI.G.BALAMURALEEDHARAN (PARAVUR) RESPONDENT(S)/ORIGINAL IST RESPONDENT: ----- 1.

SUNITHA,W/O.ULLAS,THAYYIL HOUSE, PUTHUVYPE, ELAMKUNNAPUZHA PO, PIN682503, KOCHI TALUK, ERNAKULAM DISTRICT.

2. MOHAMMEDKUNJU.A.M, S/O.MEETHIYAN, ARIMBASSERY HOUSE, CHEMBARAKKI PO, PIN683105, SOUTH VAZHAKKULAM, PERUMBAVUR.

3. K.D.VINOD, S/O.DHARMAPALAN, KOCHAMURI HOUSE, NARAKKAL PO, PIN682505, KOCHI TALUK, ERNAKULAM DISTRICT.

4. UNITED INDIA INSURANCE CO.LTD., CITY BRANCH OFFICE II, OPP.TVS NH ROAD, KALOOR PO, KOCHI68201, ERNAKULAM DISTRICT. R1 & R3 BY ADV. SRI.THOMAS CHAZHUKKARAN R,R4 BY ADV. SRI.P.K.MANOJKUMAR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON2709-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ S. Siri Jagan & K. Ramakrishnan, JJ.

----- M.A.C.A. No. 1773 of 2010 -----
----- Dated this, the 27th day of September , 2013.

JUDGMENT

Siri Jagan, J.

The claimants in O.P.(MV) No. 757/2005 before the Motor Accidents Claims Tribunal, North Paravur, are the appellants herein. They are the wife, sons and daughter of deceased Rajan, who died in an accident caused by the negligent driving of a vehicle of which the 1st respondent was the registered owner, 2nd respondent was the insured, the 3rd respondent was the driver and the 4th respondent was the Insurance Company. They filed the O.P. claiming compensation for the death of Rajan under Section 163A of the Motor Vehicles Act. The Tribunal awarded compensation under various heads as follows: Loss of dependency Rs. 1,28,064/- Loss of consortium Rs. 2,500/- Loss of estate Rs. 2,500/- Funeral expenses Rs. 2,000/- Total Rs. 1,35,064/- Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal seeking enhanced compensation.

2. According to the appellants, the accident was on 11.8.2005. The deceased was 58 years' old and was a fish merchant earning an amount of Rs. 3,000/- p.m. as income. But, the Tribunal arbitrarily fixed the income as Rs. 2,000/-. It is further submitted that as per the decision of the Supreme Court in Sarla Verma v. Delhi Transport Corporation, 2010(2) KLT M.A.C.A. No. 1773 of 2010 -:

2. :- 802, the multiplier to be adopted is 9, whereas the Tribunal has taken only 8. It is submitted that the compensation awarded under other heads are also on the lower side.

3. We have heard the learned counsel for the Insurance Company also.

4. In a claim under Section 163A, compensation cannot be decided in accordance with the formula prescribed for assessing compensation under Section 166. Only compensation fixed in the 2nd schedule to the Motor Vehicles Act alone can be awarded.

5. In this case, the appellants claimed that the deceased was a fish merchant earning Rs. 3,000/- p.m. as income. Although no evidence has been adduced in respect thereof, we find that a fish merchant would have earned at least Rs. 3,000/- in 2005. Therefore, we are inclined to fix the monthly income of the deceased as Rs. 3,000/-. Based on that income and the age of the deceased, going by the 2nd Schedule to the Motor Vehicles Act, compensation due for the death of Rajan would be Rs. 1,92,000/-. To the same, Rs.2,000/-, Rs. 5,000/- and Rs. 2,500/- have to be added for funeral expenses, loss of consortium and loss of estate respectively. The total would come to Rs. 2,01,500/-. The difference would Rs. 66,436/-. The appellants would be entitled to this amount also as additional compensation over and above what has been awarded by the Tribunal. This amount would carry interest @ 9% p.a. from the date of the M.A.C.A. No. 1773 of 2010 -:

3. :- claim petition till the date of payment. The Insurance Company is directed to deposit this amount within two months. With the above modification of the award of the Tribunal, this appeal is disposed of. Sd/- S. Siri Jagan, Judge. Sd/- K. Ramakrishnan, Judge. Tds/ [True copy] P.S to Judge.

