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Mariam Beevi Vs. K.Prabhakaran

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Court : Kerala

Decided On : Oct-05-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Mariam Beevi

Respondent : K.Prabhakaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN SATURDAY, THE5H DAY OF OCTOBER201313TH ASWINA, 1935 MACA.No. 776 of 2009 (E) ---------- [AGAINST THE AWARD DATED2705/08 IN O.P(MV).NO. 555/2003 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA] ..... APPELLANTS/CLAIMANTS: ---------- 1. MARIAM BEEVI, W/O. LATE ABDUL RAHMAN, VALIYAKUDILIL SAFEEDA COTTAGE, NEERKKUNNAM, VANDANAM P.O., ALAPPUZHA.

2. SAFEEDAMOL, D/O. LATE ABDUL RAHMAN, VALIYAKUDILIL SAFEEDA COTTAGE, NEERKKUNNAM, VANDANAM P.O., ALAPPUZHA.

3. SAFEER, S/O. LATE ABDUL RAHMAN, VALIYAKUDILIL SAFEEDA COTTAGE, NEERKKUNNAM, VANDANAM P.O., ALAPPUZHA.

4. IRSHAD (MINOR), S/O. LATE ABDUL RAHMAN, VALIYAKUDILIL SAFEEDA COTTAGE, NEERKKUNNAM, VANDANAM P.O., ALAPPUZHA, REPRESENTED BY HIS MOTHER MARIAM BEEVI, IST APPELLANT. BY ADV. SRI.S.SHANAVAS KHAN. RESPONDENTS/RESPONDENTS: ---------- 1. K.PRABHAKARAN, S/O. KRISHNAN, MADATHAHALLILI, VENKALLATHURAHALLI, P.O.PAPPATTY, DHARMAPURI DISTRICT, TAMIL NADU. * 2. A.P.VENKITACHALAM S/O. PONNUSWAMY, 1074 CROSS K.P.N.EXTN., BANGALORE. *(DELETED) Prv. M.A.C.A. NO.776/2009-E:

3. THE ORIENTAL INSURANCE COMPANY LIMITED, DIVISIONAL OFFICE, SALEM, REP. BY ITS DIVISIONAL MANAGER, THIRUVALLA. *RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANTS, VIDE

ORDER
DATED0406/13 IN I.A. 1341/13 IN M.A.C.A. 776/09. R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA). THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON0510-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Prv. S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

========== M.A.C.A.No. 776 of 2009 ========== Dated this the 5th day of October, 2013

JUDGMENT

K.Ramakrishnan, J.: The claimants in O.P.(M.V).No.555/2003 on the file of the Motor Accidents Claims Tribunal, Alappuzha, are the appellants herein. The appellants, who are the wife and children of deceased Abdul Rahman, along with his mother filed the application for compensation for the death of Abdul Rahman, who died in a motor vehicle accident caused on account of the rash and negligent driving of the vehicle by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent. After considering the evidence on record, the Tribunal found that the accident occurred due to the negligent driving of the vehicle by the 1st respondent and awarded a total compensation of ` 16,00,000/-

on various heads as follows: Head of claim Amount awarded ` 1 Compensation for the pecuniary loss caused to the petitioners due to the death of Abdul Rahman 1,560,000.00 2 Compensation for loss of love and affection 15,000.00 3 Compensation for loss of consortium to the first petitioner 15,000.00 4 Compensation for pain and suffering 5,000.00 5 Ambulance charge 2,000.00 6 Funeral expenses 3,000.00 Total 16,00,000.00 M.A.C.A.776/09 - :

2. :- Dissatisfied with the quantum of compensation awarded, the appellants have come before this Court with the above appeal. (During the pendency of the proceedings in the lower court, the 5th petitioner died and appellants 1 to 4 were recorded as her legal heirs.) 2. Heard the learned counsel for the appellants and the learned standing counsel for the insurance company.

3. The learned counsel for the appellants submitted that the deceased was a businessman and he was a partner in K.S.A. Marine Foods and he was also working as a commission agent for marine exporters. He is having his own other industries and getting not less than ` 1,00,000/- per month. But the Tribunal has taken only ` 15,000/- as his income, which is very low. Further, as per the decision of the Supreme Court in Sarla Verma v. Delhi Transport Corporation, 2009 ACJ1298(SC), the personal expenses ought to have been deducted is only one-fourth as the dependants are five in number. But the Tribunal has deducted one-third, which is not correct. The amount awarded under the heads, loss of consortium, love and affection, pain and sufferings are also on the lower side. According to the learned counsel for the appellants, the appellants are entitled to M.A.C.A.776/09 - :

3. :- enhancement on all heads.

4. On the other hand, the learned counsel for the insurance company submitted that the Tribunal has considered all the aspects in detail and awarded a just compensation and there is no need to interfere with the amount awarded by the Tribunal.

5. We have considered the rival contentions of both parties in detail.

6. The case of the appellants was that the deceased was working as a commission agent of marine sea food exporters and also he was a partner of KSA Sea Foods and having other own establishment and getting ` 1,00,000/- as monthly income. In order to prove these facts, they have produced certain documents and also examined PW3, the partner of the firm. But, a perusal of the evidence of the witness will go to show that they are having better documents to prove the income. But those documents were not produced to prove the income of the deceased. So under the circumstances, the Tribunal was perfectly justified in fixing the monthly income of the deceased as ` 15,000/- and we are not inclined to enhance the same as it appears to be just and proper. As rightly pointed out by the M.A.C.A.776/09 - :

4. :- learned counsel for the appellants, since the dependants are five in number, as per the decision in Sarla Verma's case (supra), the Tribunal ought to have deducted one-fourth instead of one- third, for the personal expenses of the deceased. If a recalculation is made on that basis, the appellants will be entitled to get an amount of ` 17,55,000/- ( ` 15,000 x 12 x 13 x) instead of ` 15,60,000/- awarded by the Tribunal and we award that amount under that head.

7. Considering the age of the 1st appellant, who is the wife of the deceased, we feel that the amount of compensation awarded by the Tribunal under the head, loss of consortium, is on the lower side and we enhance the same to ` 30,000/- from ` 15,000/-. Considering the age of the children, we feel that the amount awarded under the head, love and affection, is on the lower side and we enhance the same to ` 30,000/- from ` 15,000/-. We also enhance the amount under the head, pain and suffering to ` 10,000/- from ` 5,000/-. No amount has been awarded under the head, loss of estate and we award ` 10,000/- under that head. We do not find any reason to interfere with the amounts awarded by the Tribunal under the other heads as the amounts awarded by the Tribunal under the other heads are just M.A.C.A.776/09 - :

5. :- and proper. In all, the appellants will be entitled to get an additional amount of ` 2,40,000/- over and above the compensation awarded by the Tribunal, which the 3rd respondent insurance company is liable to pay with 9% interest per annum

from the date of petition till date of payment. Two months' time is granted to the insurance company to deposit this amount as well. The amounts due to the minor children are directed to be deposited in the name of the minors till they attain majority with liberty for the 1st appellant to receive the interest accrued thereon for the maintenance of the minor children. With the above modification of the impugned award of the Tribunal, the appeal is disposed of. Sd/- S.SIRI JAGAN, JUDGE Sd/- sdk+ K.RAMAKRISHNAN, JUDGE ///True copy/// P.A. To Judge.

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