

Azeez Bava Vs. Benny

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Court : Kerala

Decided On : Jan-06-2014

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Azeez Bava

Respondent : Benny

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY,THE6H DAY OF JANUARY201416TH POU SHA, 1935 MACA.No. 583 of 2006 () ----- OPMV. 237/2000 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KALPETTA, WAYANAD. APPELLANTS (PETITIONERS): ----- 1. AZEEZ BAVA, AGED65YEARS, S/O.LATE KADIRI, PALATHINGAL HOUSE, MANANTHAVADY P.O., MANANTHAVADY TALUK.

2. FATHIMA, AGED62YEARS, W/O.AZEEZ BAVA, RESIDING DO.

3. IBRAHIM, AGED39YEARS, S/O.AZEEZ BAVA, RESIDING DO.

4. JAMEELA, AGED37YEARS, D/O.AZEEZ BAVA, RESIDING DO.

5. LATHEEF, AGED34YEARS, S/O.AZEEZ BAVA, RESIDING DO.

6. ASHRAF, AGED32YEARS, S/O.AZEEZ BAVA, RESIDING DO.

7. RAZIA, AGED22YEARS, D/O.AZEEZ BAVA, W/O.GAFOOR, RESIDING DO.
BY ADV. SRI.N.J.ANTONY. RESPONDENTS (RESPONDENTS):

----- *1. BENNY, S/O.GEORGE,
CHOLAMANAYIL HOUSE, VEMOM P.O., CHETTAPALAM, MANANTHAVADY
(DRIVER OF LORRY KL-10A3625. [DELETED] 2. MRS.LEENA THOMAS,
EDAPPAZHATHIL HOUSE, KOTTATHARA P.O., VYTHIRI TALUK, (OWNER OF
THE LORRY).

3. THE UNITED INDIA INSURANCE CO. LTD., KALPETTA. * RESPONDENT
NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANT VIDE

ORDER

DATED1312/2013 IN I.A. NO.3374/2013 IN MACA NO.583/2006. R2 BY ADVS.
SRI.A.V.JAMES, SRI.P.DALBI EMMANUEL. R3 BY ADV. SMT.R.REMA. THIS
MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON0601-2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: rs. S.SIRI JAGAN & K. RAMAKRISHNAN, JJ.

..... M.A.C.A.NO.583
OF2006..... Dated this the 6th day of
January, 2014.

JUDGMENT

Siri Jagan, J.

The appellants are the claimants in OP(MV)No.237/2000 before the Motor
Accidents Claims Tribunal, Kalpetta. They filed the claim petition seeking
compensation for the death of Shajahan, the son of appellants 1 and 2 and the
brother of appellants 3 to 7, in an accident caused by the negligent driving of a
vehicle owned by the second respondent, driven by the 1st respondent and
insured with the third respondent insurance company. (The first respondent was
deleted from the party array, at the risk of the appellants, as per order dated

13.12.2013 in I.A.No.3374/2013). The Tribunal, after finding negligence on the driver of the vehicle, awarded compensation under various heads as follows: Transport charges Rs. 500 Funeral expenses Rs. 3,000 Loss of estate Rs. 2,000 Pain & suffering Rs. 7,500 Dependency Rs.1,20,000 ----- Total Rs.1,33,000 M.A.C.A.NO.583 0F20062 2. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants have filed this appeal seeking enhanced compensation.

3. The accident was on 9.3.2000. The deceased was aged 26 years at the time of the accident. He was a headload worker. The appellants claimed that the deceased was earning Rs.5,000/- per month. But, the Tribunal has arbitrarily fixed the notional income of the deceased at Rs.3,000/- per month, which is on the lower side, is the first contention raised by the appellants. The second contention is that the Tribunal has adopted only 5 as the multiplier, whereas going by the age of the deceased, the multiplier should have been 17. The appellants submit that the amounts awarded under the head funeral expenses, loss of estate and pain and sufferings are on the lower side. It is further submitted that the Tribunal has not awarded any compensation for loss of love and affection of the appellants.

4. We have heard the learned counsel for the insurance company also. It is pointed out that since appellants 1 and 2 are only the dependants as parents and the other appellants are major brothers and sisters, 50% ought to have been deducted M.A.C.A.NO.583 0F20063 for personal expenses of the deceased as per the decision in Sarla Verma v. Delhi Transport Corporation (2010 (2) KLT802SC). It is further submitted that the Tribunal has awarded compensation under all heads correctly.

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

6. The appellants did not adduce any evidence regarding the income of the deceased. In 2000, Rs.3,000/- per month for a headload worker appears to be a reasonable income. Therefore, we are not inclined to interfere with the income fixed for the deceased by the Tribunal. But we find merit in the contention of the appellants regarding the multiplier to be adopted. The Supreme Court has in the decision of Amrit Bhanu Shali v. National Insurance Co. Ltd. (2012 ACJ2002,

which we have followed in Annamkuty v. United India Insurance Co. Ltd. (2013 (4) KLT160, the multiplier to be adopted should be based on the age of the deceased and not on the basis of the age of the dependants. Going by the decision in Sarla Verma (cited supra), the multiplier applicable to a 26 year old person is 17. But as rightly pointed out by the counsel for the insurance company, 50% has to be deducted for M.A.C.A.NO.583 0F20064 personal expenses of the deceased since only the parents can be considered as the dependants of the deceased. In Sarla Verma (cited supra), the Supreme Court has held that in cases where only the parents are dependants and the deceased is a bachelor, 50% has to be deducted for personal expenses of the deceased. If the compensation for loss of dependency is recalculated on the basis of the these inputs, the compensation would come to Rs.3,06,000/- ($3000 \times 12 \times 17 \times 1/2$) instead of Rs.1,20,000/- awarded by the Tribunal. The difference would be Rs.1,86,000/-. Shajahan died three hours after the accident. Therefore, for the pain and sufferings of the deceased, we fix the compensation as Rs.10,000/- instead of Rs.7,500/-. For loss of estate, we fix the compensation as Rs.10,000/- instead of Rs.2,000/- We enhance the compensation for funeral expenses to Rs.10,000/- from Rs.3,000/-. For loss of love and affection of the appellants, we fix the compensation as Rs.15,000/-. Adding together, the appellants would be entitled to an additional compensation of Rs.2,18,500/- 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 petition till the date of payment. M.A.C.A.NO.583 0F20065 The third respondent insurance company is directed to deposit this amount also within three months. With the above modification of the impugned award of the Tribunal, the appeal is disposed of. Sd/- S.SIRI JAGAN, JUDGE. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S.To Judge

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