

Asha vs Sajad

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Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mr. Justice Easwaran S.

Appeal No. : MACA/252/2021

Appellant : ASHA

Respondent : SAJAD

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE EASWARAN S. FRIDAY,
THE 28TH DAY OF MARCH 2025/7TH CHAITHRA, 1947 MACA NO.
252 OF 2021 AGAINST THE ORDER/JUDGMENT DATED 07.12.2019
IN OPMV NO.224 OF 2013 OF ADDITIONAL DISTRICT COURT-II &
IST ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL,
MAVELIKKARA. APPELLANTS:

ASHA, 1 AGED 40 YEARS, PUTHENPARAMBIL VEEDU, AZHEEKKAL
P.O., ALAPPADU. 2 ALKA (MINOR), AGED 15 YEARS,
PUTHENPARAMBIL VEEDU, AZHEEKKAL P.O., ALAPPADU. 3 VAIGA
(MINOR), AGED 12 YEARS, PUTHENPARAMBIL VEEDU, AZHEEKKAL

P.O., ALAPPADU. (MINOR PETITIONERS ARE REPRESENTED BY THEIR MOTHER, GUARDIAN AND NEXT FRIEND 1ST PETITIONER-ASHA) BY ADVS. GEORGE VARGHESE(PERUMPALLIKUTTIYIL) SRI.A.R.DILEEP SRI.P.J.JOE PAUL SRI.MANU SRINATH

-2- RESPONDENTS:

1 SAJAD, MSR NAGAR, 69 MUNIRA MANZIL, KAVANADU P.O., KUZHIPUZHACHERY, KOLLAM WEST - 691 003. 2 RAMZY N, MUNEERA MANZIL, PARAKKAL VADAKKETHIL, KUREEPUZHA P.O, KOLLAM - 691 604. 3 NATIONAL INSURANCE CO LTD, REPRESENTED BY ITS BRANCH MANAGER, BRANCH OFFICE, ALAPPUZHA - 688 001. 4 SAINUDEEN, MANTHEDATH HOUSE, KOTTILE P.O, PERINTHALMANNA - 679 324. 5 THE ORIENTAL INSURANCE CO LTD, REPRESENTED BY ITS BRANCH MANAGER, BRANCH OFFICE, ALAPPUZHA - 688 001.

BY ADVS. SRI.N.S.NAJEEB SRI.P.BHARATHAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

JUDGMENT

(Dated this the 28th day of March, 2025) The appeal is preferred by the legal heirs of one deceased Kunjumon who died in a road traffic accident that occurred on 31.08.2012.

2. The facts necessary for the disposal of the case are as follows: The deceased Kunjumon while driving an autorickshaw

bearing Registration No.KL-23/D-448, through Kollam-Alappuzha NH at about 8.40 pm., when he reached Kuttivattom Junction, a WagonR car bearing Registration No.KL-2/AH-6372 hit on the autorickshaw causing injuries to the late Kunjumon. At about the same time, a Crusier Van bearing Registration No.KL-45/B- 7587, which came behind the WagonR, hit against the autorickshaw. Due to

the impact, the deceased late Kunjumon sustained severe injuries and later succumbed to the injuries at the Government Hospital, Karunagappally. The claimants contended that the deceased Kunjumon was an autorickshaw driver and he was earning a monthly income of Rs.10,000/-. In support of the contentions, Exts.A1 to A17 documents were produced. On behalf of the claimants, PW1 and PW2 were -4- examined. The said claim petition was tried along with O.P (MV) No. 375 of 2013 preferred by the passenger in the autorickshaw.

3. The tribunal on appreciation of evidence found that

the claimants could not successfully prove the monthly income of the deceased Kunjumon and therefore, proceeded to fix the income nationally at Rs.6,000/-. Still further, the tribunal did not award any compensation under the head loss of consortium to the claimants 2 and 3, the minor children of deceased Kunjumon. Hence, the claimants have approached this Court with the present appeal.

4. Heard Sri.P.J.Joe Paul, the learned Counsel appearing for the appellants, Sri.N.S.Najeeb, the learned Standing Counsel appearing for the 3rd respondent Insurance Company and Sri.P.Bharathan, the learned Standing Counsel appearing for the 5th respondent Insurance company.

5. On consideration of the rival submissions raised across the Bar, this Court finds that the claimants/appellants appeal is entitled to succeed on the following grounds:

6. Admittedly, the avocation of deceased Kunjumon has been successfully proved by the appellants by producing the -5-

driving licence of the deceased Kunjumon as Ext.A7. It is pertinent to mention that the Insurance Company did not adduce any evidence to disprove the claim of the appellants.

7. Going by the principles in the decision of the Honble

Supreme Court in Ramachandrappa v. The Manager, Royal Sundaram Allianace Insurance Company Ltd. [AIR (2011) SC 2951], even a coolie worker is entitled to

have an income of Rs.8,500/- fixed for the year 2012. Since, the deceased Kunjumon was a driver and a skilled worker, this Court proceeds to fix the notional income of the deceased Kunjumon at Rs.10,000/- as claimed by the appellants in the claim petition.

8. As regards to the claim of dependency, this Court finds that the claimants 2 and 3 have to be reckoned for the purpose of calculating the compensation under the head of loss

of dependency. However, for no reason, the tribunal has discarded the claim under the loss of consortium. It is beyond ones comprehension as to how two minor children of deceased Kunjumon could be left out of the head of loss of consortium. As an upshot of these discussions, the appellants are entitled to succeed. The appeal is thus allowed as follows: a) The notional income of the deceased Kunjumon is -6- refixed at Rs.10,000/- per month. Adding 40% of the future prospectus, the income comes to Rs.14,000/-. b) The appellants are entitled for a compensation of Rs.6,72,000/- [$14,000 \times 12 \times 15 \times \frac{2}{3} = 16,80,000 - 10,08,000$] under the head of loss of dependency. c) The amount of Rs.3,000/- (18,000-15,000) is awarded under the head of loss of estate. d) The amount of Rs.1,04,000/- ($48,000 \times 3 = 1,44,000$

- 40,000) is awarded under the head loss of consortium. e) The appellant is entitled to have a compensation of Rs.3,000/- (18,000 - 15,000) under the head of funeral expenses. f) The appellant is entitled to have an additional compensation of Rs.15,000/- under the head pain and sufferings. Thus, the appellants are entitled for an additional compensation of Rs.7,97,000/- (Rupees Seven lakhs ninety

seven thousand only). This will carry interest at 9% per annum from 01.04.2013 till date of realization. The Insurance Company shall deposit the enhanced compensation together with interest and proportionate costs within a period of two months from the date of receipt of a copy of this judgment. The claimants shall furnish the details of the bank account to the Insurance Company

-7- for transfer of the amount. The appeal is ordered accordingly. Sd/-
EASWARAN S. JUDGE ADS

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