Liya, vs Abdulrahiman,

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SooperKanoon Citation : sooperkanoon.com/1282935

Court : Kerala

Decided On : Feb-18-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/3875/2018

Appellant : LIYA,

Respondent : Abdulrahiman,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR TUESDAY, THE 18TH DAY OF FEBRUARY 2025 / 29TH MAGHA, 1946 MACA NO. 3875 OF 2018 OPMV NO.71 OF 2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL- II, PALAKKAD APPELLANTS/PETITIONERS 1 LIYA, AGED 26 YEARS, D/O.LAZAR, RESIDING AT PADAPARAMBIL HOUSE, KURICHIRA POST, VALARKAVU, THRISSUR DISTRICT. 2 VARGHESE, AGED 63 YEARS, S/O.PATHROSE, RESIDING AT PLAKKAL HOUSE, PALAYAM VADAKENCHERRY AMSOM DESOM, ALATHUR TALUK, PALAKKAD DISTRICT. 3 MARY, AGED 53 YEARS, W/O.VARGHESE, RESIDING AT PLAKKAL HOUSE, PALAYAM, VADAKENCHERRY, ALATHUR

TALUK, PALAKKAD DISTRICT. BY ADV BABY MATHEW RESPONDENTS/RESPONDENTS 1 ABDULRAHIMAN, AGED 39 YEARS, S/O.SHAHUL HAMEED, NALPATHODY HOUSE, OLIPPARA, GANDHI NAGAR, KAIRADY, CHITTUR TALUK, PALAKKAD DISTRICT-678510, (DRIVER OF TATA STAGE CARRIAGE BUS NO.KL-07-AJ 0861).

2 RAJU.K., AGED 43 YEARS S/O.KAMASHI POOSARI, OCCUPATION BUSINESS, SARASWATHY NIVAS, MATTUPALAYAM, KOLLAMKODE P.O., CHITTUR TALUK, PALAKKAD DISTRICT, PIN- 678506 (RC OWNER OF TATA STAGE CARRIAGE BUS NO.KL-07-AJ- 0861). 3 SATHIHKUMAR.N., S/O.NAGELAN, AGE AND OCCUPATION NOT KNOWN, THARAVANATTUKALAM, ADALAKURRSI, KANNADI P.O., PALAKKAD DISTRICT, PIN- 678701 (INSURED OF TATA STAGE CARRIAGE BUS NO.KL-07-AJ-0861). 4 THE NEW INDIA ASSURANCE COMPANY LTD., REGISTERED AND HEAD OFFICE, NEW INDIA ASSURANCE BUILDING 87, M.G.ROAD, FORT, MUMBAI, PIN-400001, (INSURER OF TATA STAGE CARRIAGE BUS NO.KL-07-AJ-0861).

BY ADVS. SRI.BINOY VASUDEVAN SRI.O.D.SIVADAS-R3 SRI.N.S.MOHAMMED USMAN-SC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 18.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of February, 2025 The petitioners in O.P.(M.V.) No.71/2015 on the file of the II Additional Motor Accident Claims Tribunal, Palakkad is the appellant herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal).

2. The O.P. was filed under under Section 166 of the Motor Vehicles

Act, 1988, by the wife and parents of the deceased by name Pathrose, who died in a motor vehicle accident that occurred on 25.2.2014. According to them, on 25.2.2014, at about 5.15 p.m., while the deceased along with his wife were travelling in a Maruthi Zen car, a bus bearing registration No.KL-7AJ-861 driven by the 1 st respondent in a rash and negligent manner hit against the Maruthi Zen car and as a result of which he sustained serious injuries and he succumbed to the injuries, on the same day.

3. The 1st respondent is the driver, the 2nd respondent is the owner and 3rd respondent is the insured and 4th respondent is the insurer of the offending

vehicle. According to the petitioners, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. was Rs.75,00,000/-.

4. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the oral testimonies of PW1 and PW2 and documentary evidence Exhibits A1 to A18 and B1.

6. After evaluating the evidence on record, the Tribunal found negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs.38,55,344/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioners preferred this appeal.

8. Now the point that arises for consideration is the following: Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. Heard Sri. Baby Mathew, the learned Counsel appearing for the

petitioners/appellants, Sri.O.D. Sivadas, the learned counsel for the 3rd respondent and Sri. N.S. Mohammed Usman, learned Standing Counsel for the 4th respondent.

10. The Point: In this case the accident as well as valid policy of the

offending vehicle are admitted. One of the contentions raised by the learned counsel for the petitioners is regarding the income of the deceased as fixed by the Tribunal. According to him, the deceased was working as Document Writer, earning Rs.80,000/- per month, but the Tribunal fixed his notional income at Rs.2,50,000/- per year, for the sole reason that he had not paid any income tax. Therefore, his income was fixed below the taxable income limit during the year 2013-14.

11. The learned counsel for the petitioner relied upon Exhibit A14

Register in Form B Rule 19 maintained as per the Document Writers' License Rules, which was proved by PW1, the Sub Registrar concerned. In the impugned Award itself, the Tribunal, after verifying Exhibits A14 and A18, found that the deceased had an average earning of about Rs.80,000/- during the period of accident. On a perusal of Exhibit A14 and A18, it is found to be

correct. In fact, his income as per the above documents is more than Rs.80,000/-. Since the petitioners claimed his monthly income at Rs.80,000/- alone, I am inclined to accept his monthly income at Rs.80,000/-.

12. Therefore, the annual income of the deceased during the period

will come to Rs.9,60,000/- (80000x12). During the year 2013-14, there was no income tax for the income upto Rs.2.5 lakhs. For the income between Rs.2.5 Lakhs and 5 lakhs, the income tax payable was 10% and for the income between Rs.5 lakh and 10 lakhs, the income tax payable was 20%. Therefore, for the annual income of Rs.9,60,000/- the deceased ought to have

paid an income tax of Rs.1,22,000/-. Therefore, the annual income of deceased less the income tax payable will come to Rs.8,38,000/- (960000- 1,22,000). Therefore, the monthly income of the deceased, less the income tax payable, will come to Rs.69,833/- which is rounded to Rs.70,000/-.

13. On the date of accident, the deceased was aged 33 years.

Therefore, 40% of the monthly income is liable to be added towards future prospects, as held in the decision in National Insurance Co.Ltd v Pranay Sethi [(2017) 16 SCC 680] and the multiplier to be applied is 16, as held in Sarla Verma v. Delhi Transport Corporation, [(2009) 6 SCC 121]. Since the deceased was married who left behind 3 dependents, towards personal and living expense, 1/3 of the income is liable to be deducted, as held in Sarla Verma (supra). In the above circumstances, the loss of

dependency will come to Rs.1,25,44,000/-.

14. The Tribunal has awarded Rs.15,000/- towards loss of estate,

Rs15,000/- towards funeral expenses, Rs40,000/- towards loss of consortium and Rs.50,000/- towards love and affection. In the light of the decision in Pranay Sethi (supra), the appellants are entitled to get a consolidated sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses, and the dependents (parents, children and spouse) are entitled to get a sum of Rs.40,000/- each towards loss of consortium, with an increase of 10% in every three years. Therefore, towards loss of estate and funeral expense they are entitled to get a sum of Rs.18,150/- each. Towards loss of consortium, petitioners together are entitled to get a sum of Rs.1,45,200/- (48,400 x 3).

15. Since compensation for loss of consortium was given, further

compensation for love and affection cannot be granted, in view of the decision in New India Assurance Company Ltd. v. Somwati and Others, (2020)9 SCC 644. Therefore, the compensation awarded towards love and affection is to be deducted.

16. Towards the head pain and sufferings, the Tribunal has not

awarded any compensation. The deceased died in this case on the date of the accident. In the above circumstances, I hold that the petitioners are entitled for a compensation of Rs.25,000/- towards 'pain and suffering'.

17. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

18. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.1,27,52,500/-, as modified and recalculated above and given in the table below, for easy reference: Sl.

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  No.              Head of Claim            Amount awarded by    Amou
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Enhanced Rs.88,97,156/-

19. In the result, this Appeal is allowed in part, and the 4 th respondent is directed to deposit a total sum of Rs.1,27,52,500/- (Rupees one

crore twenty seven lakh fifty two thousand and five hundred only), less the amount already deposited, if any, along with interest at the rate ordered by the Tribunal from the date of the petition till realisation/deposit, excluding interest for a period of 160 days, the period of delay in filing the appeal, with proportionate costs, within a period of two months from today. (Enhanced compensation will carry interest @8%).

20. On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioners, in the ratio fixed by the Tribunal, excluding court fee payable, if any, without delay, as per rules. Sd/- C. PRATHEEP KUMAR, JUDGE sou.