

The Manager vs Sannasi

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Court : Kerala

Decided On : Jun-28-2024

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : RP/668/2020

Appellant : The Manager

Respondent : Sannasi

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN
FRIDAY, THE 28TH DAY OF JUNE 2024 / 7TH ASHADHA, 1946
AGAINST THE JUDGMENT DATED 06.01.2020 IN MACA NO.4172 OF
2019 OF HIGH COURT OF KERALA REVIEW
PETITIONER/RESPONDENT: THE MANAGER NATIONAL
INSURANCE C.LTD., ST. GEORGE ARCADE, ABOVE SBI, NEAR
JANTHA HOSPITAL, PALA P.O. KOTTAYAM DISTRICT 686 575. BY
ADV THOMAS MATHEW NELLIMOOTTIL
RESPONDENTS/APPELLANTS: 1 SANNASI, AGED 36 YEARS S/O.
PANDIYAN 419/IW, KALIYAMMAN KOVIL STREET,
KAURUNAKKAMUTHANPATTI, UTHAMMAPALAYAM, SURULI RF,

KARUNAGAMUTHANPATTI, THENI, TAMILNADU 625 516. 2 PRIYA, W/O. SANNASI, KALIYAMMAN KOVIL STREET, KAURUNAKKAMUTHANPATTI, UTHAMMAPALAYAM, SURULI RF, KARUNAGAMUTHANPATTI, THENI, TAMILNADU 625 516.

3 KEERTHI (MINOR, 4 YEARS OF AGE), D/O. SANNASI, 491/IW, REPRESENTED BY MOTHER AND NEXT FRIEND PRIYA, W/O. SANNASI, 491/IW, KALIYAMMAN KOVIL STREET, KAURUNAKKAMUTHANPATTI, UTHAMMAPALAYAM, SURULI RF, KARUNAGAMUTHANPATTI, THENI, TAMILNADU 625 516. THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 28.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The petitioner, the 3rd respondent insurer in O.P.(MV)No.377 of 2017 on the file of the Motor Accidents Claims Tribunal, Pala, has filed this review petition invoking the provisions under Order XLVII Rule 1 of the Code of Civil Procedure, 1908, seeking review of the judgment of this Court dated 06.01.2020 in M.A.C.A.No.4172 of 2019, which was one filed by the respondents herein, who filed claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal, claiming compensation on account of the death of a minor child by name, Maneesh, the son of respondents 1 and 2 and the brother of the 3rd respondent herein, in a motor accident which occurred on 29.10.2016, while he was walking through a public road. At the place of accident, he was knocked down by a motorcycle bearing Registration No.KL-37/C-8525, ridden by the 1st respondent and owned by the 2nd respondent before the Tribunal and insured with the petitioner herein. By the award dated 09.01.2019, the Tribunal awarded a total compensation of Rs.2,70,000/- together with interest at the rate of 9% per annum from the date of petition, i.e., 27.04.2017 till realisation with costs and directed the insurer to satisfy the amount. The amount of compensation was ordered to be apportioned among the respondents herein in the ratio of 30:50:20.

2. By the judgment dated 06.01.2020, which is sought to be

reviewed in this review petition, this Court disposed of MACA No.4172 of 2019 by granting additional compensation of Rs.8,10,000/- with interest at the rate of 8% per annum from the date of petition till realisation. Paragraph 37 of that judgment reads thus;

37. In the result, the appellants are entitled for payment of an additional compensation of Rs.8,10,000/- [Rupees Eight lakh and ten thousand only] (7,20,000 + 80,000 + 10,000), in this appeal, which will carry interest at the rate of 8% per annum from the date of petition till realisation. The additional compensation granted in this appeal, excluding that granted to appellants 1 and 2 under the head filial consortium, shall be apportioned among the appellants in the ratio 40:50:10. The respondent insurer shall satisfy the additional compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of a certified copy of this judgment, after deducting the liability, if any, of the appellants/claimants towards Balance Court Fee and Legal Benefit Fund. The insurer shall also deduct the liability of the appellants/claimants towards additional Court Fee in this appeal, in view of the amendment made to sub- rule (3) of Rule 397 of the Kerala Motor Vehicles Rules, 1989 with effect from 16.01.2015, and the same shall be deposited before this Court. Registry shall calculate the additional Court Fee payable in this appeal and a statement to that effect shall also be enclosed along with the certified copy of the judgment. The disbursement of the amount to the appellants/claimants shall be in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06.09.2019 and clarified further in Official Memorandum No.D1-62475/2016 dated 07.11.2019. The additional compensation payable to the 3rd appellant/3rd claimant, who is minor, shall be deposited in fixed deposit in a Nationalised Bank, till she attain majority. The appellants to

provide their Bank account details before the Tribunal, with copy to the learned Standing Counsel for the insurer, within one month from the date of receipt of a

certified copy of this judgment.

3. The fixation of dependency compensation in the judgment

sought to be reviewed was based on the law laid down by a learned Single Judge of this Court in National Insurance Company v. Assainar [2019 (4) KLT 39]. The law laid down in Assainar was dealt with in paragraphs 12 to 14 of the judgment sought to be reviewed and the dependency compensation was refixed in paragraph 15 of that judgment. Paragraphs 12 to 15 of the judgment sought to be reviewed read thus; 12. In Assainar's case (supra), the questions formulated for decision were as follows;

(i) Can multiplier method be accepted as the

appropriate mode of assessment of compensation for loss of dependency in all cases involving death of children and if not, what shall be the mode for assessment of compensation under that head?

(ii) What shall be the multiplier to be applied for

computing compensation for loss of dependency in cases involving death of children and what shall be the additions and deductions to be made for determining the multiplicand for the said purpose?

13. In the said decision, this Court held that except in

exceptional cases where the children are earning during their minority itself and positive evidence is let in, in the proceedings to establish the prospective services and pecuniary benefit expected from them, compensation in respect of school going

children died in motor accidents above the age of 6 upto the age of 15, shall be uniformly computed and granted applying multiplier method. Paragraph 12 of the said decision reads thus; 12. It is a fact that only in a very few cases coming up before the Motor Accidents Claims Tribunals, evidence is let in by the parties. Even among the said cases, cases

involving death of children is a minuscule. The practice adopted in such cases is to compute compensation for loss of dependency applying multiplier method based on a notional income arrived at subjectively by the Tribunal. It is on account of this reason that there has been no uniformity in the compensation granted by the Tribunals in the State. Except in exceptional cases where the children are earning during their minority, according to me, the expectation of the parents about their children would only be that they would be a helping hand for them in future, financially and otherwise. The said expectation may or may not materialise. For instance, an intelligent bright child may not financially or otherwise support his parents at their old age, and at the same time, the possibility of a child who is not that much bright and intelligent supporting the parents financially and otherwise at their old age cannot be ruled out. Be that as it may, after the introduction of the Right of Children to Free and Compulsory Education Act, which confers on all children in the age group of 6 to 14, right to free and compulsory education till the completion of his or her elementary education, irrespective of their financial and other backgrounds, the parents of all school

going children in that age group who are not earning need to be treated alike in the matter of considering their expectations about their children. It is all the more so since it has come to light, situations where children from very poor backgrounds have achieved greater heights in life and situations vice versa. If such a view is not taken, there would be situations where different compensation would be granted in respect of children studying together, but hailing from different backgrounds. Having regard to the advancement of medical sciences, the reason that mortality rate is high among the children below the age of 10 also cannot be accepted. In the circumstances, according to me, except in exceptional cases where the children are earning during their minority itself and positive evidence is let in, in the proceedings to establish the prospective services and pecuniary benefit expected from them, compensation in respect of school going children died in motor accidents above the age of

6 up to the age of 15, shall be uniformly computed and granted applying multiplier method.

14. In the said decision, this Court held further that, in cases

involving death of children in the age group of 6 to 15 years after 2018 amendment to Section 163A of the Motor Vehicles Act, 1988 compensation can be fixed appropriately on the basis of the compensation prescribed under Section 163A, namely, Rs.5,00,000/-, after offsetting the effect of inflation on the real value of money. The multiplier to be applied for arriving at the compensation for dependency payable in cases involving the death of children can be '15', and the mode of assessment is as

provided for in the Second Schedule to the Motor Vehicles Act, viz, that one third of the notional income shall be deducted while determining the multiplicand, subject, of course, to the condition that the compensation shall not go below the compensation prescribed under the Act. This Court held that, no amount can be added to the notional income towards future prospects while determining the multiplicand for computing compensation for loss of dependency in cases involving death of children. On the issue as regards the manner in which notional income has to be arrived at in cases involving death of children, in a proceedings under Section 166 of the Motor Vehicles Act, this Court held that the notional income of children died after the financial year 1995-96 can be determined applying the table showing the cost inflation index notified by the Government of India from time to time, the corresponding money value for Rs.24,000/-, applying the cost inflation index upto the year 2018-19 and the nearest thousand of the money value arrived at. Paragraphs 17 to 19 of the said decision reads thus; 17. What remains to be considered is the issue as regards the manner in which notional income has to be arrived at in cases involving death of children in a proceedings under Section 166 the Act. The plethora of precedents in

matters relating to computation of compensation in cases involving children do not provide consistency or uniform guidelines for the tribunals and courts to approach the matter with certainty or with absolute confidence. As noted, in the context of cases involving death of children below the age of 10, except in cases where the children are actually earning during their minority itself, determination of notional income has been a mere process of guess work. Having regard to the large number of motor accident claims coming up for adjudication before the tribunals and the summary nature of

the proceedings contemplated under the Act for adjudication of such claims, according to me, there is need for a simplified procedure for the said purpose so as to maintain uniformity in the awards. Except in exceptional cases where the circumstances warranted a different yardstick to be followed for arriving at the notional income, according to me, the statutory prescription contained in the Second Schedule can be the basis for fixing the notional income.

18. Once it is accepted that the multiplier to be applied while

computing compensation for dependency is 15 and the mode of assessment is as provided for in the Second Schedule to the Act, viz, that one third shall only be deducted from the notional income to determine the multiplicand, as it is found that the compensation payable under the un-amended Section 163A is Rs.2,40,000/-, it can be seen, though it is provided in the Second Schedule that the notional income of a non-earning person shall be reckoned at Rs.15,000/-, the notional income in respect of children below the age of 15 is actually contemplated to be reckoned at Rs.24,000/-. In other words, having regard to the fact that Section 163A is a provision introduced only with effect from 14.11.1994, and having regard to the compensation granted by various courts in cases involving death of children during the said period, I am of the view that Rs.24,000/- can be fixed, except in

exceptional cases where a different yardstick has to be followed, as the notional income of the children died in accidents till the end of the financial year 1995-96. But the said amount cannot be reckoned as the notional income in cases arising in the subsequent years, as it is common knowledge that rupee value has come down drastically thereafter and the effect of inflation in the subsequent years has therefore, to be offsetted. In Chetan Malhotra & Ors.v. Lala Ram & Ors. (2016

(2) KLT OnLine 2511 (Del.)= CDJ 2016 DHC 865), the Delhi

High Court has made an endeavour to bring in uniformity in the compensation granted in cases involving death of children. In the said case, it was found that having regard to the fluctuating trends in consumer price index, the cost inflation index determined and notified by the Ministry of Finance in Government of India under Section 48 of the Income Tax Act, 1961, for each financial year would be a better method to offset the effect of inflation on the real value of money. The view expressed in the said case appears to be sound and can be accepted. A table showing the cost inflation index notified by the Government of India from time to time, the corresponding money value for Rs.24,000/- applying the cost inflation index up to the year 2018-19 and the nearest thousand of the money value arrived at, is furnished hereunder for ready reference :

SCHEDULE 2 Sl. Financial Cost Cost Value Value to No. Inflation Inflation Nearest Year Index New Index Thousand

1	1995-96	281	24,000	24,000	2	1996-97	305	26,050	26,000	3	1997-98	331	28,270	28,000	
4	1998-99	351	29,979	30,000	5	1999-00	389	33,224	33,000	6	2000-01	406	34,676	35,000	
7	2001-02	426	36,384	36,000	8	2002-03	38,204	38,000	9	2003-04	36,659	40,000	10	2004-05	41,114
11	2005-06	42,570	43,000	12	2006-07	44,389	44,000	13	2007-08						

100 46,936 47,000 14 2008-09 105 49,847 50,000 15 2009-10 109
53,849 54,000 16 2010-11 113 60,762 61,000

17 2011-12 117 66,947 67,000 18 2012-13 122 72,769 73,000 19 2013-
14 129 80,046 80,000 20 2014-15 137 87,322 87,000 21 2015-16 148
92,416 92,000 22 2016-17 167 96,055 96,000 23 2017-18 184 98,965
99,000 24 2018-19 200 101,876 102,000 In other words, the notional
income of children died after the financial year 1995-96 can be
determined applying the above table and I have no doubt, the same
would certainly provide uniformity in the awards.

19. The outcome of the aforesaid discussion as regards compensation payable for loss of dependency in cases involving death of children can be summarised as follows:

(1) Compensation in respect of school going children

died in motor accidents above the age of 6 and upto the age of 15 shall be computed applying the multiplier method, and the multiplier to be applied shall be 15, subject to the condition that the compensation shall not go below the prescribed amount in terms of the Second Schedule.

(2) Except in exceptional cases, where different

yardsticks have to be followed for arriving at the notional income having regard to the cogent and irrefutable evidence let in by the parties, the notional income of the deceased children in the age group of 6 to 15 shall be determined as in the Second Schedule, viz, Rs.24,000/-, after making appropriate correction for offsetting the inflation, as indicated in the table

furnished in paragraph 18 above.

(3) No amount need be added to the notional income towards future prospects and one third of the notional income has to be deducted towards personal expenses

while computing compensation.

(4) Except in exceptional cases, where the Tribunal

finds on cogent and irrefutable evidence let in by the parties that the quantum of compensation arrived at in cases involving death of children below the age of 6 in the manner indicated in this judgment will not satisfy the requirement of just compensation, consolidated amounts can be granted by way of compensation. The consolidated amounts for the said purpose shall be as provided for in Section 163A of the Act as applicable to death cases namely, Rs.2,40,000/-, subject to a progressive addition to be made from year to year, at the rate of Rs.12,000/- for every year after 1995, for cases involving death upto the year 2018. Thereafter, the compensation shall be computed as provided for in the amended Section 163A, viz, Rs.5,00,000/-, after offsetting the effect of inflation on the real value of money, as indicated in Clause (2) above.

15. In the instant case, the deceased was aged 5 years. Towards

dependency compensation, the Tribunal awarded Rs.2,40,000/- (5,600 x 12 x 15 x). The accident occurred on 29.10.2016, i.e., during the financial year 2016-17. Applying the principle laid down in Assainar's case (supra), the dependency compensation has to be calculated taking a notional annual income of Rs.96,000/-; applying the multiplier of 15; and deducting 1/3 towards the personal and living expenses of the

deceased. In the result, the compensation under the head loss of dependency is re-fixed as Rs.9,60,000/- (96,000 x 15 x 2/3). After deducting a consolidated amount of Rs.2,40,000/- awarded by the Tribunal towards loss of dependency, the additional compensation payable under this head comes to Rs.7,20,000/- (9,60,000 - 2,40,000).

4. Heard the learned Standing Counsel for the review petitioner- insurer and the learned counsel for the respondents-appellants- claimants.

5. The learned Standing Counsel for the insurer would contend

that this Court went wrong in refixing the compensation towards loss of dependency, applying the principle laid down in Assainar [2019 (4) KLT 39], since the age of the deceased at the time of accident was three years. On the other hand, the learned counsel for the respondents- claimants would point out clause (4) of paragraph 19 of the judgment in Assainar.

6. In *Thungabhadra Industries Ltd v. Government of*

Andhra Pradesh [AIR 1964 SC 1372] the Apex Court held that, review is, by no means an appeal in disguise, whereby an erroneous decision is reheard and corrected, but lies only for correcting patent errors.

7. In *Northern India Caterers (India) Ltd. v. Lt. Governor*

of Delhi [(1980) 2 SCC 167] the Apex Court held that, if the view adopted by the Court in the original judgment is a possible view, having regard to what the record states; it is difficult to hold that there is error apparent on the face of the record.

8. In *Parsion Devi v. Sumitri Devi* [(1997) 8 SCC 715] the

Apex Court, in the context of the power of review under Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 held that, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1 of the Code. In exercise of the jurisdiction under Order XLVII, Rule 1 of the Code, it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

9. Later, in *Lily Thomas v. Union of India* [(2006) 3 SCC

224] the Apex Court reiterated that, the power of review can be exercised for correction of a mistake but not to substitute a view. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review.

10. In *Anantha Reddy N. v. Anshu Kathuria* [(2013) 15 SCC

534] the Apex Court held that, the review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self - evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits.

11. In view of the law laid down by the Apex Court in the

decisions referred to supra, the review jurisdiction under Order XLVII, Rule 1 of the Code is very limited and unless there is mistake or error apparent on the face of the record, the judgment does not call for review. Further, whilst exercising such power of review, the Court cannot be oblivious of the provisions contained in Order XLVII, Rule 1 of the Code and that the limits within which the Court can exercise the power of review have been well settled in a catena of decisions. Viewed in the light of the law laid down by the Apex Court in the decisions referred to supra, none of the grounds raised in this review petition fall within the ambit and scope of Order XLVII, Rule 1 of the Code. In the result, this review petition fails and the same is accordingly dismissed. Sd/- ANIL K. NARENDRAN JUDGE bkn/-

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