

Paulose vs Arun Jose

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : MACA/396/2018

Appellant : Paulose

Respondent : Arun Jose

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN
WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946 AGAINST
THE AWARD DATED 07.11.2017 IN O.P (MV) NO.529 OF 2016 OF MOTOR
ACCIDENT CLAIMS TRIBUNAL, KASARAGOD APPELLANTS/PETITIONERS :-

1 PAULOSE, S/O. MATHEW, ATHIKOTH HOUSE, NOW RESIDING AT
OREETHAYIL HOUSE,KAMMADAM, P.O MANDAPAM,BHEMANADY
VILLAGE,VELLARIKUNDU TALUK, 2 MARRIYAKUTTY, W/O.
PAULOSE, ATHIKOTH HOUSE, NOW RESIDING AT OREETHAYIL
HOUSE,KAMMADAM, P.O MANDAPAM,BEEMANADY
VILLAGE,VELLARIKUNDU TALUK, 3 LALI, W/O. LATE THANKACHAN

@ MATHEW,ATHIKOTH HOUSE, NOW RESIDING AT OREETHAYIL HOUSE, KAMMADAM,P.O MANDAPAM, BHEEMANDY VILLAGE,VELLARIKUNDU TALUK, KASARAGOD DISTRICT. 4 ASHLY MATHEW, D/O. LATE THANKACHAN, NOW RESIDING AT OREETHAYIL HOUSE, KAMMADAM, P.O MANDAPAM,BHEEMANADY VILLAGE, VELLARIKUNDU TALUK, 5 ALBIN MATHEW, S/O.LATE THANKACHAN, OREETHAYIL HOUSE,KAMMADAM,P.O MANDAPAM, BHEEMANADY VILLAGE,VELLARIKUNDU TALUK, BY ADVS. SRI.SUBHASH CYRIAC SMTSHEEBA JOSEPH

RESPONDENTS/RESPONDENTS 1 TO 2 :- 1 ARUN JOSE, S/O. JOSE, NADATHIPAREMBIL HOUSE, KOLIYADU P.O,WEST ELERI, VELLARIKUNDU TALUK, KASARAGOD DISTRICT,PIN 671 314 2 THE BRANCH MANAGER UNITED INDIA INSURANCE COMPANY LIMITEDNITHYANANDA BUILDING, MAIN ROAD,KANHANGAD, P.O KANHANGAD, KASARAGOD DISTRICT 671 315 BY ADV P.A.REZIYA THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 31.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has been filed by the claimants in O.P (MV) No.529 of 2016 on the file of the Motor Accidents Claims Tribunal, Kasargod. The respondents herein are the respondents before the tribunal.

2. According to the appellants/claimants, on 31.10.2016 at

about 07.15 pm, while the deceased was walking along the edge of Chittarickal - Kunnumkai PWD road and when he reached the bus stop at Kammadam, a motorcycle bearing Registration No.KL-60-D- 2965 came from the same direction hit the deceased from behind and the deceased sustained serious injuries. He was taken to the hospital but succumbed to the injuries on 01.02.2016. The appellants approached the tribunal claiming a total compensation of Rs.34,50,000/-, which was limited to Rs.25,00,000/-

3. The respondent insurer filed a written statement, admitting the policy, but disputing the quantum of compensation claimed. Before the tribunal, no oral evidence was adduced on

either side. Exts.A1 to A9 were marked on the side of the appellants/claimants and Exts.B1 and B2 were marked on the side of the respondents. The tribunal, after analysing the pleadings and materials on record, awarded a sum of Rs.12,40,350/- as compensation under different heads with interest @ 9% per annum from the date of petition till realization, against the respondent being the insurer. Dissatisfied with the quantum of compensation awarded by the tribunal, the claimants have come up in appeal.

4. Heard the learned counsel for the appellants and the learned Standing Counsel for the respondent insurer.

5. The learned counsel for the appellants claims enhancement mainly under the following heads: Loss of consortium :- The learned counsel for the appellants

submitted that there are five legal heirs for the deceased Thankachan Paul @ Mathew but the tribunal has awarded only an amount of Rs.1,00,000/- only for the 3rd petitioner. As per the

judgment in National Insurance Company Ltd. v. Pranay Sethi

[2017 (4) KLT 662 (SC)], the wife and children are entitled for loss of consortium. Accordingly, I am inclined to grant a total

amount of Rs.2,00,000/- (40,000x5) under the said head. An amount of Rs.10,000/- was awarded by the tribunal under the head compensation for loss of love and affection and protection, and also an amount of Rs.1,00,000/- was awarded by the tribunal under the head loss of consortium. After adjusting those two amounts (1,00,000 +10,000), an additional amount of Rs.90,000/- (2,00,000 - 1,10,000) is granted towards the head loss of consortium.

Funeral expenses :- The learned standing counsel for the insurance company submitted that an amount of Rs.25,000/- was granted towards funeral expenses,

whereas the appellants are entitled only for Rs.15,000/-. Going by the judgment in Pranay Sethi [supra] I am of the opinion that the amount of compensation paid under the head funeral expenses has to be fixed at Rs.15,000/-. Thus, there will be a deduction of Rs.10,000/- under the said head. Loss of estate :- The learned counsel for the appellants submitted that only an amount of Rs.5,000/- was awarded towards loss of estate. Going by the judgment in Pranay Sethi (supra), the appellants are entitled for an amount of Rs.15,000/- under the said head. Thus, there will be an additional amount of Rs.10,000/- under the head loss of estate. Compensation for loss of economic benefits and

dependency:- The learned counsel for the appellants submitted that the multiplier applied while awarding compensation under the head loss of economic benefits and dependency was 11 instead of 13. It is further submitted that the deceased was aged 50 years at the time of accident. On a perusal of the award it is also seen that the deceased was aged 50 years. Following the Judgment in Sarla Varma v.Delhi Transport Corporation (2009(6)SCC 121) and Pranay Sethi (supra) I find that the multiplier to be applied is 13 instead of 11. Hence, the compensation paid under the said head

is recalculated thus: $(10,650 \times 12 \times 13 \times 3/4)$. Therefore, the total compensation payable under the said head is Rs.12,46,050/-. The tribunal has already awarded Rs.10,54,350/- and therefore, there will be an additional amount of Rs.1,91,700/- under the head compensation for loss of economic benefits and dependency.

6. Though the appellants claimed enhancement of

compensation under other heads, on a perusal of the records available, I am not inclined to interfere with the compensation awarded by the tribunal under other heads since it appears to be just and reasonable.

7. Thus, the impugned award of the tribunal is modified as follow:-

Sl. No.	Head of Claim	Amount claimed by the tribunal	Amount Modified	Total compensation awarded in appeal
1	Loss of earnings	20,00,000	Nil	Nil

1	Loss of earnings	20,00,000	Nil	Nil
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expenses 4 Damage to 25,000 Nil Nil Nil clothing

5 Others :- Medical and

expenses 6 Compensation for 25,000 Nil Nil Nil pain and suffering 7
Compensation 2,00,000 10,000 -10,000 Nil for loss of love and affection and
protection 8 Compensation 10,00,000 10,54,350 1,91,700 12,46,050 for loss of
economic benefits and dependency 9 Loss of 1,00,000 1,00,000 1,00,000
2,00,000 consortium 10 Compensation Not 5,000 10,000 15,000 for loss of
claimed estate TOTAL 34,50,000 12,40,350 2,81,700 15,22,050 limited to
25,00,000 Accordingly, the appeal is allowed in part and the

appellants/claimants is awarded an additional compensation of Rs.2,81,700/-
(Rupees two lakhs eighty one thousand seven hundred only) over and above the
compensation awarded by the tribunal with interest @ 9% per annum from the
date of petition till realization and proportionate costs. It is made clear that the
insurance company will be entitled to recover the amount from the 1st respondent.
The respondent insurer shall deposit the said amount together with interest and
costs within a period of two months from the date of receipt of a certified copy of
this judgment. The claimant shall furnish copies of the PAN Card, ADHAAR Card
and bank details before the respondent insurer within a period of one month so as
to enable the insurance company to make the deposit as ordered above. In case
of failure to furnish details as above, it shall be open for the insurance company to
deposit the said amount before the tribunal. Upon such deposit being made, the
entire amount shall be disbursed to the appellants at the earliest in accordance
with law.

Sd/- SHOBA ANNAMMA EAPEN JUDGE SMA

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