Raseena vs Ajayakumar

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Court : Kerala

Decided On : Jan-31-2024

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : MACA/1579/2012

Appellant : Raseena

Respondent : Ajayakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. WEDNESDAY, THE 31ST DAY OF JANUARY 2024 / 11TH MAGHA, 1945 AGAINST THE ORDER/JUDGMENT IN OPMV 1201/2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOLLAM APPELLANTS/PETITIONERS:

1 RASEENA W/O.LATE NOUSHAD,NEHRA MANZIL, NEDUVILA MURI,SOORANAD NORTH. 2 NEHRA AGED 15 YEARS D/O.LATE NOUSHAD,(MINOR), REPRESENTED BY IST APPELLANT, NEHRA MANZIL,NEDUVILA MURI,SOORANAD NORTH. 3 NAJUMA AGED 12 YEARS D/O.LATE NOUSHAD,(MINOR), REPRESENTED BY IST APPELLANT, NEHRA MANZIL,NEDUVILA MURI,SOORANAD NORTH.

4 AJIMIYA AGED 11 YEARS D/O.LATE NOUSHAD,(MINOR), REPRESENTED BY IST APPELLANT, NEHRA MANZIL,NEDUVILA MURI,SOORANAD NORTH. 5 ISHA BEEVI M/O.LATE NOUSHAD,NEHRA MANZIL, NEDUVILA MURI,SOORANAD NORTH. BY ADV SRI.PRATHEESH.P

RESPONDENTS/RESPONDENTS: 1 AJAYAKUMAR MULLAVELI VEEDU,MANNADY.P.O, PATHANAMTHITTA-691530. 2 HUSSAIN KALLUVILA EDAPPURA VEEDU, AMBALATHUMBHAGAM.P.O, KUNNATHOOR-690520. 3 SHAJI PONNARA KIZHAKKATHIL VEEDU,PAZHAKULAM WEST,PALLICKAL,ADOOR-691528. 4 THE DIVISIONAL MANAGER THE NATIONAL INSURANCE CO.LTD, KOLLAM-691001. BY ADVS. SERGI JOSEPH THOMAS - R1 SRI.GEORGE CHERIAN (SR.) SRI.GEORGE CHERIAN SR. SMT.LATHA SUSAN CHERIAN - R4 SMT.K.S.SANTHI THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellants are the petitioners in O.P.(MV)No.1201 of 2011 on the files of the Motor Accidents Claims Tribunal, Kollam.

2. The said claim petition was filed by the appellants

herein, seeking compensation for the death of one Noushad due to the injuries sustained in a motor accident that occurred on 01.02.2011. According to the appellants, the accident occurred when the said Noushad, who was a fish vendor, after purchasing fish from Vadi market, and

transporting the said fish in an auto rickshaw bearing registration No.KL-26/506 through the National Highway, due to the rash and negligent driving of the auto rickshaw by the 3rd respondent, it capsized and the said Noushad was thrown out to the road, thereby sustaining serious injuries. Eventhough, he was taken to the Medical College Hospital, Alappuzha, he succumbed to the injuries. The said Noushad was the husband of the 1st appellant, father of appellants 2 to 4 and the son of the 5 th appellant in this case. According to the claimants, the deceased was a fish vendor, who was

aged only 39 years at the time of the accident with a month income of Rs.6,000/-. The claim petition was submitted in such circumstances seeking compensation.

3. The 4th respondent appeared and filed a written

statement contending that, the deceased was travelling in the said vehicle as a gratuitous passenger and therefore, the Insurance Company is not liable to indemnify the risk of such a passenger. They also disputed the quantum of compensation.

4. The evidence in this case consists of the oral

testimony of PW1 and Exts.A1 to A9 from the side of the appellants. From the side of the respondents, Exts.B1 and B2 were marked. After the trial, the Tribunal came to the

conclusion that, the accident occurred due to the negligence

on the part of the driver of the auto rickshaw.

5. However, the Tribunal found that, the appellants

could not produce any evidence to show that the deceased accompanied the goods and therefore, the 4 th respondent- insurance company was exonerated from the liability. The 2nd respondent, the registered owner of the auto rickshaw, was found liable to pay the compensation. The quantum of compensation was fixed as Rs.8,02,500/- and the same was permitted to be recovered from 2nd respondent with interest at the rate of 7.5% per annum from the date of petition till realisation. This appeal is filed by the appellants in such circumstances, challenging the order exonerating the Insurance Company and seeking enhancement of compensation.

6. Heard Sri. Pratheesh P, the learned counsel

appearing for the appellants, Sri Sergi Joseph Cherian, the learned counsel appearing for the first respondent and Smt.Latha Susan Cherian, the learned counsel appearing for the fourth respondent.

7. The first question to be considered is whether the

findings of the Tribunal, holding that the appellant was travelling as a gratuitous passenger in the vehicle is correct or not. The learned counsel for the appellants would point out that, it is evident from the police reports and the evidence of PW1 that, at relevant time, he was travelling in the good autorickshaw, which was carrying fish, purchased

by the deceased from the market. The accident occurred when he was traveling in the said vehicle along with the said goods and therefore, he cannot be treated as gratuitous passenger, but on the other hand, he was the owner of the goods carried in the said vehicle.

8. The learned counsel for the 3rd respondent would

point out that, even if that contention is accepted, the coverage of policy could not be provided in this case. As evidently, the deceased was traveling on the platform of the vehicle and not inside the cabin. Therefore, the liability to indemnify such risk cannot be imposed upon the 4 th respondent-insurance company.

9. In Ext.A1 FIR, it has been clearly mentioned that,

the 1st informant along with the deceased, was travelling in the said vehicle with fish purchased by them, from the market, for the purpose of sale and the accident occurred at that point of time. However, as pointed out by the learned counsel for the 4th respondent, in the First Information Statement, it is specifically stated by the 1 st informant that, both of them were traveling on the platform of the vehicle,

which was meant for carrying goods and passengers. Of course, it is true that, in the light of the statement given by the 1st informant in Ext.A1, coupled with the evidence of PW1, it could be possible to hold that he was travelling in the said vehicle, along with the fish which he purchased for the purpose of sale, but as rightly pointed out by the learned counsel for the 4th respondent-Insurance company, admittedly, the deceased was traveling on the platform of the auto rickshaw, which was not only permissible and it was also beyond the coverage of the policy. The aforesaid question was considered by a Division Bench of this Court in New India Assurance Company Ltd. v. Alekutty Antony and Others [2009 (4) KLT 130. In the said decision, this Court considered the question as to the coverage of the insurance policy in respect of the head load workers carried in the goods vehicle. Even though it was

held that, as the head load workers were carried in the said

vehicle in connection with the operation of the said vehicle and therefore, they would come under Section 147 of the Motor Vehicles Act, the insurance company was exonerated from the liability,on the ground that, from the materials placed on record in that case, it has come out that, they were traveling on the platform of the vehicle and not inside the cabin. Therefore, it was held that they cannot be treated as persons coming within the statutory coverage of policy contemplated under Section 147 (1)(B) of the Motor Vehicles Act.

10. Moreover, in United India Insurance Co. Ltd. v. Suresh K.K. and Another [2008 (4) KLT 552] the Honble Supreme Court observed that, as the deceased in that case was traveling in the goods auto rickshaw by

sharing the seat of the driver, the liability of the insurer could not be extended to that risks. The learned counsel for the appellant placed a reliance upon the decision rendered by this Court in M/s Shriram General Insurqance Company Ltd. v. Manu and Others , wherein this Court directed the Insurance Company to pay the compensation first, in similar circumstances and to get it recovered from

the registered owner of the said vehicle after the satisfaction of the same.

11. However, in this regard, it is to be noted that in

New India Assurance Co.Ltd. v. Daisy Paul [2021 (2) KLT Online 1063 : ILR 2021 (2) Ker. 346], this Court after referring to large number of decisions including National Insurance Co. Ltd. v. Saju P Paul & Anr. [2013 (2) SCC 41], Manuara

Khatun & Ors. Rajesh Kr. Singh & Ors. [2017(1) KLT Online 2033 : 2017(4) SCC 796], Shamanna & Anr. v. The Divisional manager, Oriental Insurance Co.Ltd. & Ors. [2018 (4) KLT 367 (SC)], National Insurance Co.Ltd. v. Parvathneni & Anr. [2009 (3) KLT 995 (SC)] and National Insurance Company v. Roshan Lal & Anr. [2007 (1) KLT Online 1179 (SC) : 2017 (4) SCC 803],. it was held that, in any

case of compensation at the instance of gratuitous passengers in a vehicle, the insurance company cannot be directed to pay compensation and to get it recovered from the registered owner of the said vehicle.

12. Paragraphs 14 to 17 of the decision Daisy Pauls case (Supra) reads thus; 14. Following Saju Paul (supra) the Honourable Supreme Court in Manuara Khatun and others vs. Rajesh Kr. Singh and others (supra) also in the peculiar

facts of the above cases, de-hors the fact that the victims

were gratuitous passengers, directed the Insurance Companies to pay the compensation to the dependents of the deceased and then recover the amount from the insured.

15. In Shamanna and another vs. the

> Divisional Manager, Oriental Insurance Co Ltd and others (supra), the Honourable Supreme Court relying on its earlier decisions in Swaran Singh and Laxmi Narain Dhut (supra) directed the Insurance Company to pay compensation and recover it from the insured. However, these decisions were rendered in cases falling within the sweep of Section 149 of the Act - cases involving violation of policy conditions. Therefore, the said decisions are not applicable to present case.

16. The power of Honourable Supreme Court to

direct an Insurance Company to pay the compensation to the victim and recover the amount from the insured, in exercise of its powers under Article 142 of the Constitution of India, was doubted and referred to a larger Bench in National

Insurance Co Ltd vs. Parvathneni and another [(2009) 8 SCC 785]. However, by order dated 17.9.2013, the Special Leave Petition was dismissed and the reference has been kept open to be decided in an appropriate case. Again in National Insurance Company vs. Roshan Lal and another [(2017) 4 SCC 803] the question has been placed before a larger Bench.

17. On an overall re-appreciation of the facts,

> Sections 147 and 149 of the Act and the aforecited precedents, I am of the definite opinion that the law laid by the three Judge Bench in Asha Rani, and Tilak Singh, that a Statutory Policy only covers death or bodily injury of a third party falling within the sweep of Section 147 of the Act, is squarely applicable to the facts of the present case. Therefore, as additional premium was admittedly not paid to cover the first respondent, I have no hesitation to hold that the first respondent was a gratuitous passenger and was not covered by Exhibit B-1 policy. Hence, the impugned award directing the appellant to pay compensation to the first respondent is erroneous and is liable to be set aside.

13. In the light of the observations made above, the insurance company cannot be asked to pay the compensation first with the right to recover the same from the registered owner. Thus, in the light of the categorical

pronouncement of the legal proposition as per Alekutty Antonys case (Supra) by a Division Bench of this Court and Daisy Pauls case (Supra) by a Single Bench of this Court, I am of the view that, the finding of the Tribunal exonerating the insurance company from the liability cannot be interfered with. Therefore, the said finding is confirmed.

14. The next aspect is relating to the quantum of

compensation. The learned counsel for the appellants pointed out that, the Tribunal awarded a very meager amount as compensation under various heads particularly under the head of loss of dependency. It was pointed out that, the monthly income taken by the Tribunal for assessing the compensation was

Rs.5,500/- which was on the lower side. After considering the materials placed on record, I find force in the said contention. It is to be noted that, the accident occurred in the year 2011. Of course, it is true that, there is no convincing evidence produced by the appellants to substantiate the monthly income of the

deceased. However, when the method of computation of

monthly income evolved from the principles laid down by the Honble Supreme Court in Ramachandrappa V. Manager, Royal Sundaram Alliance Insurance Co. Ltd [(2011) 13 SCC 236] and Syed Sadiq V. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735], is adopted in the absence of any evidence, the monthly income of an ordinary worker has to be fixed as Rs.4,500/- in respect of the accident occurred in the year

2004. For the subsequent years, the monthly income could

be reckoned by adding Rs.500/- each per year. The said method of computation is logical, and it is consistently followed by this Court. When adopting the said method, the monthly income in this case would come to Rs.8,000/-, as the accident occurred in the year 2011. Since the said computation represents a reasonable amount, the same can be accepted in this case. It is true that, the monthly income claimed by the appellants are Rs.6,000/- only, but, that would not preclude this Court from taking a higher monthly income if the facts and circumstances of the case justifies such a claim. This Court is under an obligation to fix the

compensation in such a manner as to ensure just compensation to the victim.

15. Moreover, in Minu Rout and Another v.

Satyapradyumna Mohapatra and Others [(2013)10 SCC 695], the Honourable Supreme Court was pleased to take the monthly income at a higher rate than claimed in the claim petition as well. Therefore, Rs.8,000/- is fixed as the monthly income. As the deceased was aged 39 years at the time of accident 40% of the income has to be added towards future prospects. He left behind five dependence and therefore, the deduction towards the personal expenses would be . Thus, while reassessing the compensation for loss of dependency with the above criteria the amount would come to Rs.15,12,000/- [(Rs.8000+40%) X 12 X 15 X 3/4] the amount already awarded by the tribunal is Rs.7,42,500/- and the additional compensation would come to Rs.7,69,500/-.

16. When moving on to the other heads, it can be seen that the Tribunal awarded Rs.10,000/- each, under the heads of loss of estate and funeral expenses, whereas the actual amounts payable under these heads were Rs.15,000/- each, in the light of National Insurance Company Ltd., v. Pranay Sethi [2017(4) KLT 662(SC)]. Accordingly, further sums of Rs.5,000/- each is awarded under these heads.

17. The next head which requires re-consideration is

the loss of consortium. In the light of Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram [(2018) 18 SCC 130] and United India Insurance Co.Ltd v. Satinder Kaur, [2020 SCC OnLine SC 410] all the claimants, being wife, children and mother of the

deceased were entitled to compensation for loss of consortium @ Rs.40,000/- each and thus making out a total amount of Rs.2,00,000/-. The tribunal has already awarded an amount of Rs.10,000/- under the head of loss of consortium and a further sum of Rs.20,000/- for loss of love and affection. As per the decision rendered by the Honble Supreme Court in Satinder Kaur @ Satwinder Kaur and Other [(2021)11 SCC 780], when compensation for loss of consortium is awarded, no separate compensation needs to

be granted for loss of love and affection. Hence, the said amount can be adjusted towards the compensation for loss of consortium fixed by this Court. Thus the additional amount under the head would come to Rs.1,70,000/-.

18. Accordingly the total compensation is determined as Rs.9,49,500/- (Rs.7,69,500/- + 5,000/- + 5,000/- + 1,70,000/-).

19. In the result, this appeal is allowed in part, and

the award dated 23.05.2012 in OP(MV)No.1201/2011 passed by the Motor Accidents Claims Tribunal, Kollam is hereby modified by granting an additional amount of Rs.9,49,500/- (Rupees Nine Lakhs Forty Nine thousand and Five hundred only) and the said amount can be recovered from the 2 nd respondent, the registered owner of the autorickshaw, with interest at the rate as ordered by the Tribunal and proportionate costs, within a period of three months from the date of receipt of a copy of this judgment.

Sd/- ZIYAD RAHMAN A.A, JUDGE LU