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C.Vinod Kumar vs Uma Rani

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Court : Kerala

Decided On : Apr-02-2024

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

Appeal No. : MACA/1957/2015

Appellant : C.Vinod Kumar

Respondent : Uma Rani

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TUESDAY, THE 2ND DAY OF APRIL 2024 / 13TH CHAITHRA, 1946 MACA NO. 1957 OF 2015 AGAINST THE AWARD DATED 28.02.2014 IN OPMV NO.267 OF 2007 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA APPELLANTS/PETITIONERS IN OP(MV): 1 C.VINOD KUMAR AGED 42 YEARS S/O. CHELLAPPAN NAIR, KUNJANVETTIL HOUSE, KANICHUKULANGARA, CHERTHALA. 2 BALAMANY AMMA AGED 48 YEARS D/O. CHELLAPPAN NAIR, 'KARTHIKA', KANICHUKULANGARA, CHERTHALA. BY ADV SRI.R.KRISHNAKUMAR (CHERTHALA) RESPONDENT/S: 1 UMA RANI 'THRIVENI', MUHAMMA POST, CHERTHALA, ALAPPUZHA - 688

625. 2 SATHEESAN K.M S/O. MADHAVAN, KANIYANCHIRA HOUSE, EAST OF POCLASSERY TEMPLE, MARARIKKULAM NORTH PANCHAYATH WARD NO.6, MARARIKKULAM, CHERTHALA TALUK, ALAPPUZHA DISTRICT. 3 NEW INDIA ASSURANCE COMPANY LIMITED ALAPUZHA, REP. BY ITS DEPUTY MANAGER, REGIONAL OFFICE, KOCHI - 682 016. R3 BY ADV SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENTS CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.03.2024 ALONG WITH MACA.2388/2014, THE COURT ON 02.04.2024 DELIVERED THE FOLLOWING: MACA Nos.1957/15 & 2388/2014 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TUESDAY, THE 2ND DAY OF APRIL 2024 / 13TH CHAITHRA, 1946 MACA NO. 2388 OF 2014 AGAINST THE AWARD DATED 28.02.2014 IN OPMV NO.267 OF 2007 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, ALAPPUZHA APPELLANT/3RD RESPONDENT: NEW INDIA ASSURANCE CO.LTD ALAPPUZHA REPRESENTED BY THE DY.MANAGER, REGIONAL OFFICE, KOCHI. BY ADV SRI.RAJAN P.KALIYATH RESPONDENTS/CLAIMENTS & RESPONDENTS 1 AND 2:

1 C.VINOD KUMAR AGED 42 YEARS S/O.CHELLAPPAN NAIR, KUNJARVEETTIL HOUSE, KANICHUKULANGARA, CHERTHALA, PIN-688582. 2 BALAMANY AMMA RESIDING AT KARTHIKA, KANICHUKULANGARA, CHERTHALA, PIN-688582. 3 UMARANI THRIVENI, MUHAMMA POST, CHERTHALA, ALAPPUZHA, PIN-688525. 4 SATHEESAN K.M. S/O.MADHAVAN, KANIYANCHIRA HOUSE, EAST OF POCLASSERY TEMPLE, MNP, WARD 6, CHERTHALA, 688524. (DELETED) (THE NAME OF THE FOURTH RESPONDENT IS DELETED FROM THE ARRAY OF PARTIES AS PER ORDER DATED 4/7/16 IN IA R1 AND R2 BY ADV SRI.R.KRISHNAKUMAR (CHERTHALA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05.03.2024, ALONG WITH MACA.1957/2015, THE COURT ON 2.4.2024 DELIVERED THE FOLLOWING: MACA Nos.1957/15 & 2388/2014 3

JUDGMENT

[MACA Nos.1957/2015, 2388/2014] ... Both these appeals arose from an award passed by the Additional

Motor Accidents Claims Tribunal, Alappuzha in OP(MV) No.267/2007. The said claim petition was submitted by the claimants who are the appellants in M.A.C.A.No.1957/2015 seeking compensation for the death of one Biju, due to the injuries sustained in a motor accident that occurred on 26.01.2006 (For convenience, the parties in these appeals are hereinafter referred to on the basis of their respective ranks in the claim petition).

2. The petitioners are the siblings of the deceased who was

aged 32 years and unmarried. The accident occurred when the motorcycle ridden by the deceased was hit by a mini bus bearing registration No.KL-04/Q-7479 driven by the 2 nd respondent. The 1st respondent was the owner and the said vehicle was insured with the 3 rd respondent. The deceased was an Excise Guard with a monthly income of Rs.5808/-. The claim petition was submitted in such circumstances. M.A.C.A. No.1957/2015 is filed by the petitioners seeking enhancement of compensation, whereas M.A.C.A. No.2388/2014 is filed by the 3 rd respondent challenging the award.

3. Heard Sri.R.Krishnakumar (Cherthala), the learned counsel appearing for the appellants in M.A.C.A.No.1957/2015 and for 1 st and 2nd

MACA Nos.1957/15 & 2388/2014 4 respondent in M.A.C.A.No.2388/2014 and Sri.Rajan P. Kaliyath, the learned counsel appearing for the appellant in M.A.C.No.2388/2014 and for 3rd respondent in M.A.C.A.No.1957/2015.

4. The 1st respondent filed a written statement contending that

the accident occurred due to the negligence of the deceased himself. It was also averred that the mini bus was validly insured with the 3 rd respondent and if at all there is any liability, that has to be indemnified by them. The 3rd respondent filed a written statement admitting the coverage of policy for the mini bus. However, they denied the negligence on the part of the 2nd respondent in driving the mini bus. It was also contended that, the petitioners cannot claim compensation as they have their own job and income. It was pointed out that, the petitioners were not dependent upon the deceased and hence the dismissal of the claim petition was sought.

5. The evidence in this case consists of Exhibits A1 to A8. No

evidence was adduced by the respondents. After the trial, the Tribunal found that the accident occurred due to the negligence of the 2 nd respondent and being the insurer, the 3 rd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.7,67,000/- and the 3 rd respondent was directed to deposit the said amount along with interest at the rate of 7.5% per annum from the date of petition till realization. M.A.C.A No.1957/2015 was filed by the petitioners

MACA Nos.1957/15 & 2388/2014 5 seeking enhancement of compensation whereas M.A.C.A.No.2388/2014 was filed by the 3rd respondent challenging the award.

6. The first question to be determined is with respect to the

contention raised by the 3rd respondent as to the negligence. However, the crucial aspect to be noticed is that the police registered Exhibit A1 FIR and after completing the investigation, Ext.A4 final report was submitted implicating the 2nd respondent as the accused. The 3 rd respondent did not adduce any contra evidence. In the light of the observations made by this Court in New India Assurance Company Limited v. Pazhaniammal [2011(3) KLT 648] in the absence of any contra evidence, the conclusions arrived at by the Police in the final report submitted after the investigation in the crime registered in connection with the accident, can be taken as a prima facie proof of the accident. Therefore, I do not

find any scope of interference in the findings entered into by the Tribunal in the absence of any contra evidence.

7. The next contention raised by the learned counsel for the 3 rd

respondent is with respect to the right of the petitioners to claim compensation. The main objection highlighted by the 3 rd respondent is that, the petitioners were not dependent upon the income of the deceased and in the absence of such dependency, the claim petition should not have been entertained. The learned counsel for the 3 rd respondent places reliance upon New India Assurance Co.Ltd v. Anand Pal and Others [2024

MACA Nos.1957/15 & 2388/2014 6 ACJ 6] and Unni v. Baby John [2008(2) KLT 78]. On the other hand, the learned counsel for the petitioners would point out that as per Section 166 of the Motor Vehicles Act, any legal representative can file an application for compensation and in this case, the petitioners being the persons who have the right to inherit the estate of the deceased, they have the locus standi to maintain the application. The learned counsel also relies upon Manjuri Bera v. Oriental Insurance Company Ltd. and Another [(2007)10 SCC 643], National Insurance Company Limited v. Birender and Ors. [2020(2) KLT 182(SC)] A.Manavalagan v. A.Krishnamurthy [ILR 2004 Kar.3268], Joseph v. Giji Varghese [2009(4)KLT 199], United India Insurance Co.Ltd v. Shalumol and Others [2021(5) KHC 28] and Royal

Sundaram Alliance Insurance Company Limited v. V.S.Sujatha [2023(6)KHC 89].

8. As far as the question of right of the legal representatives to

claim compensation is concerned, there cannot be any doubt as the same is specifically contemplated under Section 166 of the Motor Vehicles Act. As per Section 166(1)(c) of the Motor Vehicles Act, where the death has resulted from an accident, a claim for compensation can be maintained by all or any of the legal representatives of the deceased. The expression legal representative has been defined in Rule 2(k) of the Kerala Motor Vehicles Rules,1989. As per the same, Legal representative means a person who in law is entitled to inherit the estate of

the deceased if he

MACA Nos.1957/15 & 2388/2014 7 had left any estate at the time of his death and also includes any legal heir of the deceased and the execution or administrator of the estate of the deceased. In this case, the 3rd respondent does not have a contention that the petitioners are not the brothers of the deceased and there is any other person who is entitled to inherit the estate. The contention of the 3 rd respondent-Insurance Company is to the effect that, the petitioners have their own employment and income, and therefore they were never dependent upon the deceased. It is true that, on the materials now available on record, there is absolutely nothing to indicate that the

petitioners were dependent upon the deceased. Therefore, the adjudication of the issue highlighted in this case has to be made by taking a view that the petitioners were not dependent upon the deceased.

9. Thus, the question that arises is as to whether, in the absence

of any dependency, can the petitioners claim compensation for the death of the deceased in this case. While examining the various judicial precedents in this regard, one of the most important decisions to be noted is in Madhya Pradesh State Road Transport Corporation v. Sudhakar & Ors.[(1977)3 SCC 64]= AIR 1977 SC 1189] wherein The Honble Supreme Court held that a legal representative who was not dependent can maintain an application. In such cases, the compensation has to be granted for loss of estate. The relevant observations made by the Honble Supreme Court are as follows:

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> 19. We may summarise the principles enunciated, thus: i) The law contemplates two categories of damages on the death of a person. The first is the pecuniary loss sustained by the dependant members of his family as a result of such death. The second is the loss caused to the estate of the deceased as a result of such death. In the first category, the action is brought by the legal representatives, as trustees for the

dependants beneficially entitled. In the second category, the action is brought by the legal representatives, on behalf of the estate of the deceased and the compensation, when recovered, forms part of the assets of the estate. In the first category of cases, the Tribunal in exercise of power under Section 168 of the Act, can specify the persons to whom compensation should be paid and also specify how it should be distributed (Note: for example, if the dependants of a deceased Hindu are a widow aged 35 years and mother aged 75 years, irrespective of the fact that they succeed equally under Hindu Succession Act, the Tribunal may award a larger share to the widow and a smaller share to the mother, as the widow is likely to live longer). But in the second category of cases, no such adjustments or alternation of shares is permissible and the entire amount has to be awarded to the benefit of the estate. Even if the Tribunal wants to specify the sharing of the compensation amount, it may have to divide the amount strictly in accordance with the personal law governing succession, as the amount awarded and recovered forms part of the estate of the deceased. ii) Where the claim is by the dependants, the basis for award of compensation is the loss of dependency, that is loss of what was contributed by the deceased to such claimants. A conventional amount is awarded towards loss of expectation of life, under the head of loss to estate. iii) Where the claim by the legal representatives of the deceased who were not dependants of the deceased, then the basis for award of compensation is the loss to the estate, that is the loss of savings by the deceased. A conventional sum for loss of expectation of life, is added.

(iv) The procedure for determination of loss to estate is broadly

the same as the procedure for determination of the loss of dependency. Both involve ascertaining the multiplicand and capitalising it by multiplying it by an appropriate multiplier. But, the significant difference is in the figure arrived at as multiplicand in cases where the claimants who are dependants claim loss of dependency, and in cases where the

claimants who are not dependents claim loss to estate. The annual contribution to the family constitutes the multiplicand in the case of loss of dependency, whereas the annual savings of the deceased becomes the multiplicand in the case of loss to estate. The method of selection of multiplier is however the same in both cases.

MACA Nos.1957/15 & 2388/2014 9

10. In Manjuri Beras case (supra), the Honble Supreme Court

considered the question as to the right of a married daughter of the deceased who was not dependent upon the deceased to claim compensation under section 140 of the Act. It was found that, since it is a statutory compensation, the same would form part of the estate of the deceased and his daughter being the legal representative, was entitled to inherit his estate, and she can claim compensation. In Shalumols case

(supra), this Court after elaborately considering various judicial precedents on the point, found that, the dependency is only a criteria for legal representatives to claim loss of dependency under section 166 of the Act and is not the be all end all criteria to claim other pecuniary and non pecuniary conventional heads of compensation. The right of the legal representative who was not dependent upon the deceased was also upheld in a Division Bench judgment of this Court in Josephs case (supra). Similarly, in Royal Sundaram Alliances case (supra) also, it was

held that the major married son who was not dependent upon the

deceased also would be still covered by the legal representatives of the deceased. The said decision was rendered by this Court by placing reliance upon Manjuri Bera and Birenders case (supra).

11. Of course, it is true that, a Division Bench of this Court in Unni v. Baby Johns case (supra) which was relied on by the learned counsel for the 3rd respondent, held that the brothers or other relatives of the MACA Nos.1957/15 & 2388/2014 10

deceased who are not legal heirs of the deceased or legal representatives cannot claim compensation even if, as a matter of fact, they were dependents on the deceased for financial assistance. However, the said decision was rendered in connection with a claim petition which was filed by the brothers along with the father and mother of the deceased. Since as per the personal law of the parties, brothers were found to be not the legal heirs of the deceased, as the father and mother of the deceased were alive. Therefore, the factual circumstances under which Unnis case (supra) was decided was different. Similarly, in the decision of by the Honble Supreme Court in Anand Pals case (supra)also, which is yet another decision relied on by the learned counsel for the 3rd respondent, the case considered was the right of the claimants 1,7 and 11 in the said claim petition who were the brothers of the deceased. Therefore, in that case also, there were other claimants who would come under the definition of legal representatives.

12. On the other hand, in this case, it is evident that, there is no

dispute with regard to the question that the petitioners were the persons who had the right to inherit the estate of the deceased and therefore they would fall under the definition of legal representatives, being legal heirs. Therefore, they can very well maintain the application for compensation for the death of the deceased in this case.

13. It is to be noted in this regard that the question regarding the

MACA Nos.1957/15 & 2388/2014 11 right to apply for compensation and the entitlement to get compensation are different. Being the legal representatives, the petitioners would no doubt be entitled to maintain an application under section 166 of the Motor Vehicles Act as the said provision specifically authorizes them to do so. However, even while accepting that they have the right to claim compensation under the said provision, the next question that has to be considered is under which heads they can claim compensation. Since the claim for compensation for loss of dependency is one of the major heads on which the claim can be made in a case of death, in the absence of

dependency, either financial or otherwise, the petitioners cannot be held

to be entitled for the same. Then, the question that arises here is as to heads under which claim can be considered. In Sudhakars case (supra), the manner in which the compensation has to be assessed in a case where claim was put forward by the legal representatives who are not dependents, was considered. The Honble Supreme Court has specifically observed that even in that case, the right of the claimants would be with respect to the loss of estate and while calculating the loss of estate, the same procedure for determination of the loss of dependency has to be

adopted. However difference should be while ascertaining the multiplicand. The difference that arises here is because of the fact that, in a case of dependent-legal representative, the loss of dependency has to be calculated on the basis of the annual contribution to the family, whereas, in a case of legal representatives who are not dependent upon

MACA Nos.1957/15 & 2388/2014 12 the deceased, the multiplicand has to be fixed on the basis of the savings of the deceased, as the same form part of the estate of the deceased. In Josephs case (supra), a Division Bench of this Court has specifically addressed this issue and laid down a clear method for assessing the compensation in such cases. In paragraph 5 of the said decision, it was observed as follows:

> 5. The learned counsel for the appellant further raised a contention that even though there is no loss of dependency, there is loss of estate to the claimants and respondents 4 to 8, they being legal heirs of the deceased. The contention is that the Tribunal ought to have granted compensation considering the loss of estate. It has come out in evidence that the deceased was an Agriculturist. Even though there is no proof regarding quantum of income derived by the deceased, it can be presumed that the deceased was earning some amount out of agricultural operations. If that be so, whatever surplus amount, which will remain after meeting

personal expenses of the deceased, would have been his savings which ultimately could have devolved upon his sibling (legal heirs) as his estate. Taking view of the matter in this angle, we are of the opinion that the Tribunal ought to have granted compensation under the head of loss of estate. On our moderate estimate we arrive that the deceased was getting notional income of Rs.1500/- per month. Considering the fact that he had no wife and children personal expenses. Based on the age of the deceased the correct multiplier to be adopted is. Therefore 1/3rd of the earnings can be computed as loss of estate of the deceased. Thus the legal heirs of the deceased are entitled to get an amount of Rs.66,000/- towards loss of estate. We are inclined to award the said amount. Hence the total compensation need be re-fixed at Rs.92,500/- (Rs.66,000-Rs.26,500).

14. As per the above observations made in the decision of Josephs case (supra), the possible saving of an unmarried person who had no dependents can be reasonably reckoned as 1/3 of his income.

MACA Nos.1957/15 & 2388/2014 13 This reasoning is sound and logical. Therefore, I am of the view that, in this case, multiplicand for determining the compensation for loss of estate which is the major head for which the petitioners are entitled for, can be assessed on the basis of the same.

15. Thus, the discussions made on the basis of the various

decisions referred to above, would certainly lead to the conclusion that, the petitioners being the persons who have the right to inherit the estate of the deceased are legal representatives within the meaning of Section 166 of the Motor Vehicles Act, 1988, r/w. Rule 2(k) of the Kerala Motor Vehicles Rules, 1989. As far as the amount of compensation is concerned, their right to claim has to be only in respect of compensation for loss of estate which has to be calculated on the basis of the multiplicand/ multiplier method as held in Sudhakars case (supra). The multiplicand has to be determined on the basis of the principles laid down by the Division Bench in Josephs case (supra) ie. 1/3rd of the income of the deceased. While considering the same all the other parameters which are applicable for

assessing the compensation for loss of dependency can be applied in the light of the principles laid down in Sudhakars case (supra).

16. When coming to the quantification of compensation in this case, in the light of the findings entered above, the compensation awarded by the Tribunal towards loss of the future economic benefits has

MACA Nos.1957/15 & 2388/2014 14 to be re-assessed. The same would represent the compensation for loss of estate and it is to be calculated by taking 1/3 of the monthly income of the deceased and by applying the multiplier applicable to the age of the

deceased with necessary addition towards future prospects as contemplated in National Insurance Co. Ltd vs Pranay Sethi and Others [(2017)16 SCC 680]. In this case, it has come out in evidence that, the deceased was an Excise Guard with a monthly income of Rs.5808/-. Since, the same is not seriously disputed, I am of the view that, the said monthly income can be accepted. As the deceased was aged 32 years at the time of the accident, the multiplier applicable would be 16. In the light of Pranay Sethis case (supra) there would be an addition of 50% of the monthly income as he was employed in a regular vacancy with periodical increments. The deduction to be made towards personal expenses would be 2/3rd, since the possible savings the deceased would have made, had he lived, would be 1/3rd and the said 1/3rd would form part of the estate of the deceased. Therefore, the same has to be calculated for assessing the compensation for loss of estate. While assessing the said compensation as above, the amount would come to Rs.5,57,568 [(5808+50%) x 12 x 16 x 1/3]. The amount already awarded by the

Tribunal under this head is Rs.7,20,000/- and thus the excess compensation awarded by the tribunal would come to Rs.1,62,432/-.

17. When moving on to the other heads, it can be seen that, the

MACA Nos.1957/15 & 2388/2014 15 Tribunal awarded an amount of Rs.25,000/- towards funeral expenses whereas proper amount that should have been awarded

under this head is Rs.15,000/-. The excess amount awarded by the Tribunal under this head is Rs.10,000/-. Thus the total excess compensation awarded by the Tribunal was determined as Rs.1,72,432/- [1,62,432+10,000]. Accordingly, the total amount of compensation receivable by the petitioners is re-assessed as Rs.5,94,568/- [7,67,000-1,72,432]. In the result, both these appeals are disposed of by modifying the

award dated 28.02.2014 passed by the Additional Motor Accidents Claims Tribunal, Alappuzha in OP(MV)No.267/2007 by re-assessing the compensation as Rs.5,94,568/- [Rupees Five Lakhs Ninety four thousand Five hundred and Sixty eight only]. The said amount shall be deposited by the 3rd respondent, the appellant in M.A.C.A.No.2388/2014, along with interest at the rate as ordered by the Tribunal with proportionate costs within a period of three months from the date of receipt of copy of this

judgment after adjusting the amounts, if any, already deposited.

Sd/- ZIYAD RAHMAN A.A. JUDGE pkk

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