

Kadeeja vs Mayan C.K

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Court : Kerala

Decided On : Feb-09-2024

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

Appeal No. : MACA/2247/2014

Appellant : Kadeeja

Respondent : Mayan C.K

Judgement :

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. FRIDAY, THE 9TH DAY OF FEBRUARY 2024 / 20TH MAGHA, 1945 MACA NO. 2247 OF 2014 AGAINST THE ORDER/JUDGMENT OPMV 696/2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL VADAKARA APPELLANTS/PETITIONERS:

1 KADEEJA, AGED 68 YEARS, W/O.MOIDEENKOYA, 2 JAMEELA, W/O.LATE BASHEER, AGED 43 YEARS. 3 JASHEERA, AGED 24 YEARS, D/O.LATE BASHEER, 4 SAJINA, AGED 23 YEARS, D/O.LATE BASHEER, ALL ARE RESIDING AT KOROTHMEETHAL HOUSE, MUNDOTH ULLIYERI, KOYILANDY TALUK, KOZHIKODE DISTRICT. 5

AYISHA, AGED 59 YEARS, D/O.LATE MOIDEENKOYA, KALLUKANDY UNNIKULAM, KOZHIKODE. 6 HAMEED, AGED 54 YEARS, S/O.MOIDEENKOYA, 459A, KOORIKANDY KOTTOR,

MACA.No.2247/2014 2 KOYILANDY. 7 JAMEELA, AGED 43 YEARS, D/O.LATE MOIDEENKOYA, THIRUCHERY, ARIKULAM, KOYILANDY. BY ADV.SRI.ZUBAIR PULIKKOOL RESPONDENTS/RESPONDENTS:

1 MAYAN C.K., ALULLATHIL HOUSE, NANMANDA.P.O., KOYILANDY TALUK, KOZHIKODE DIST-673 613. 2 MOOSAKOYA.A.T., S/O.AYAMMEDKUTTY, KORANGAL HOUSE, THAMARASSERY.P.O, KOZHIKODE DIST. 3 ROYAL SUNDARAM ALLIANCE INSURANCE CO.LTD., 'SUNDARAM TOWERS, 45 & 46 WHITES ROAD, CHENNAI-600 002. 4 AZEEZ, AGED 47 YEARS, S/O.LATE MOIDEENKOYA, KOROTHMEETHAL MONDOTH, ULLIYERI, KOYILANDY TALUK. BY ADV.ARSHID.M.S. ADV P JACOB MATHEW- R4

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 09.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.No.2247/2014 3

JUDGMENT

Appellants are the petitioners in O.P. (MV).No.696 of 2010 on the file of the Motor Accidents Claims Tribunal, Vatakara. The said claim petition was submitted by them seeking compensation for the death of one Basheer due to the injuries sustained in a motor accident that occurred on 15.12.2009.

2. According to the appellants, the accident occurred

when he was knocked down by a stage carriage bearing registration No.KL-57/7333, driven by the 2 nd respondent. The said vehicle was owned by the 1st respondent and was insured with the 3rd respondent. The deceased was a head load worker with a monthly income of Rs.10,000/-. He was 46 years old at the time of the accident. The deceased was the son of the 1 st and 2nd claimants, husband

of the 3rd claimant and father of the claimants 4 and 5. During the pendency of the claim petition, the 1st appellant/1st claimant died and supplementary petitioners 6 to 8 and supplementary respondent No.4 were impleaded as legal heirs. The claim petition was submitted in such circumstances.

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3. The 3rd respondent resisted the claim by filing a written

statement pointing out the negligence on the part of the 2nd respondent. However, they admitted the coverage of the policy for the vehicle. The quantum of compensation was also disputed by them.

4. The evidence in this case consists of Exts.A1 to A9 from

the side of the respondents. After examining the materials placed on record, the Tribunal concluded that the accident occurred due to the negligence of the 2nd respondent and being the insurer, the

3rd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.7,25,960/- and the said amount was directed to be deposited with interest at the rate of 7.5% per annum from the date of petition till realization with proportionate costs. This appeal is submitted by the appellants being dissatisfied with the quantum of compensation.

5. Heard Sri. Zubair Pulikool, the learned counsel for the appellants and Sri. P. Jacob Mathew, the learned counsel for the 3rd respondent. MACA.No.2247/2014 5

6. The question that arises for consideration is whether

any enhancement of compensation is required or not. On perusal of the records, I find that the amount awarded by the Tribunal under various heads requires reconsideration. The first aspect to be noticed is the monthly income, which the Tribunal took as Rs.4,000/-, even though the claim in this regard was Rs.10,000/-. The deceased claimed to be a head load worker, and to substantiate the same, Ext.A6 to A8 documents were produced. Even though the said documents would

indicate that he was a head load worker, there is nothing to show the monthly income that the deceased used to earn from his employment. However, even if that is so, the monthly income of Rs.4,000/- appears to be grossly inadequate for an accident that occurred in the year 2009. It is to be noted in this regard that when the method of computation as per the principles laid down by the Honourable

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 Co.[2014 (2) SCC 735] is adopted; even for an MACA.No.2247/2014 6

ordinary worker without any skills, the monthly income can be reasonably fixed as Rs.7,000/- for an accident in the year 2009. When considering the fact that the deceased was a head load worker, which is an employment under organized sector with regular income, a slightly higher monthly income should have been taken. Therefore, I deem it appropriate to fix it as Rs.8,000/-. As the deceased was aged 46 years at the time of the accident, an addition of 25% is to be made towards future prospects. Since he left behind five dependents, the deduction towards personal expenses should have been . Thus, while reworking the compensation with the above criteria, the compensation under this head would come to Rs.11,70,000/- $[(8000+25\%) \times 12 \times 13$

$\times 3/4]$. The amount already awarded by the Tribunal is Rs.6,48,960/- and thus, the additional compensation would come to Rs.5,21,040/-.

7. The next head which requires reconsideration is the

loss of consortium. In the light of Magma General Insurance Co.Ltd. v. Nanu Ram & Others 2018 (3) KLT Online 3095 (S.C.) and United India Insurance Co. Ltd. v. Satinder Kaur MACA.No.2247/2014 7 [2020 (3) KHC 760], all the claimants, being the parents, wife and children are entitled to compensation for loss of consortium at the rate of Rs.40,000/- each, thereby making out a total amount of Rs.2,00,000/- . The Tribunal awarded an amount of Rs.25,000/- towards loss of consortium and a further sum of Rs.10,000/-

towards loss of love and affection. As it was held in Satinder Kaur (supra) that, when compensation for loss of consortium is awarded, it is not necessary to award compensation for loss of love and affection, the amount of Rs.10,000/- awarded under this head can be adjusted against the additional amount fixed for loss of consortium. Accordingly, the additional amount payable towards

the loss of consortium is fixed as Rs.1,65,000/- [200000- (25000+1000)].

8. The learned counsel for the 3rd respondent at this

juncture would point out that the Tribunal awarded excess compensation under the heads of funeral expenses and loss of estate. It is seen that the amounts awarded under the said heads were Rs.20,000/- each, whereas the actual amounts payable are Rs.15,000/- each in the light of National Insurance Co. Ltd v. MACA.No.2247/2014 8 Pranay Sethi [2017 (4) KLT 662 (S.C.)]. Therefore, an amount of Rs.5,000/- each was directed to be deducted. Thus, while reassessing the compensation with the above criteria, the additional compensation would come to Rs.6,76,040/- [(5,21,040+1,65,000) - (5000+5000)]. In the result, this appeal is allowed. The award dated

02.01.2014 passed by the Motor Accidents Claims Tribunal, Vatakara in O.P. (MV).No.696 of 2010 is hereby modified by granting an additional compensation of Rs.6,76,040/- [Rupees six lakhs seventy six thousand and forty only] and the said amount is directed to be deposited by the 3rd respondent along with interest at the rate as ordered by the Tribunal and proportionate costs within a period of three months. It is further clarified that, as the appeal was filed with a delay of 108 days in filing the appeal and this court condoned the delay subject to the condition that the appellant shall not be entitled to interest for the additional amount awarded by this Court for the period of delay, the 3rd respondent shall be at liberty to exclude the said period while computing the interest on the additional compensation. It is further ordered that

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the claimants shall furnish the details of the PAN Card, AADHAR Card and Bank details to enable the Insurance Company to make the deposit as ordered above, within a period of one month from the date of receipt of a copy of this judgment. In case, they fail to furnish the said details, it shall be open for the Insurance Company to deposit the said amount before the Tribunal.

Sd/- ZIYAD RAHMAN A.A. JUDGE DG/12.2.24

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