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Johny vs R.Anbalagan,

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Court : Kerala

Decided On : Jun-20-2024

Judge : Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : MACA/26/2019

Appellant : JOHNY

Respondent : R.Anbalagan,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN THURSDAY, THE 20TH DAY OF JUNE 2024 / 30TH JYAISHTA, 1946 MACA NO. 26 OF 2019 AGAINST THE AWARD DATED 19.01.2018 IN O.P (MV) NO.1012 OF 2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR APPELLANTS/PETITIONERS 2 TO 4 :- 1 JOHNY, AGED 65 YEARS F/O.LATE DANY JOHN, RESIDING AT VATTAKUZHY HOUSE, P.O.VALLACHIRA, THRISSUR DISTRICT. 2 MERCY, AGED 57 YEARS W/O.JOHNY, RESIDING AT VATTAKUZHI HOUSE, VALLACHIRA P.O., THRISSUR DISTRICT. 3 DEEPAK JOHN, AGED 34 YEARS S/O.JOHNY, RESIDING AT VATTAKUZHI HOUSE, VALLACHIRA P.O.,

THRISSUR DISTRICT. BY ADVS. T.C.SURESH MENON SRI.P.S.APPU SRI.A.R.NIMOD RESPONDENTS/RESPONDENTS 1 TO 3 & 1ST PETITIONER :-

1 R.ANBALAGAN, S/O.RAJAGOPALAN, KOLOTHUNGAN LORRY SERVICES, 62-3 CROSS, NEW EXTENSION, BANGALORE-560002. 2 THIYAGARAJAN, S/O.MANI, RESIDING AT 3/20, SOUTH STREET, KOLLI HILLS, MAIN ROAD, KALAPPANAICKEN PATTY, NAMAKKAL, TAMILNADU-637001. 3 THE ORIENTAL INSURANCE COMPANY LIMITED, 90-A, THURAIYUR ROAD, NAMAKKAL-637002, TAMILNADU. 4 NEENA, AGED 32 YEARS W/O.DANY JOHN(LATE), RESIDING AT VATTAKUZHI HOUSE, P.O.VALLACHIRA, THRISSUR DISTRICT-680562. BY ADV.P.JACOB MATHEW - SC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the claimants in O.P (MV) No.1012 of 2010 on the file of the Motor Accidents Claims Tribunal, Thrissur. The respondents herein were respondents 1 to 3 & the first petitioner before the tribunal.

2. According to the appellants/claimants on 28.04.2010 at 10.30 am, when the deceased was travelling in an Innova Car

bearing Registration No.KL-45/A-6678 through Krishna Giri- Dharmapuri NH 7 road, a lorry bearing Registration No.KA-01/D- 2025 hit against the Innova Car, as a result of which, he sustained very fatal injuries. Though the deceased was taken to the hospital, he succumbed to the injuries on the same day. The appellants, being the legal heirs of the deceased, have approached the tribunal claiming a total compensation of Rs.17,00,000/-.

3. The 3rd respondent insurer filed a written statement,

admitting the policy, but disputing the quantum of compensation claimed. Before the tribunal, PW1 adduced oral evidence on the side of the petitioners. Exts.A1 to A34 were marked on the side of the appellants 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 12,46,400/- as compensation under different heads with interest @ 9% per annum from the date of petition till realization, against the third 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; Notional Income/Compensation for loss of

dependency :- The learned counsel for the appellants submits that the deceased was the Managing Partner of Vattakkuzhi Prince Jewellery. The learned counsel for the appellants also produced Ext.A34 certificate dated 16.10.2016 to prove that the deceased was the Managing Partner of Vattakkuzhi Prince Jewellery. It is also submitted by the learned counsel for the appellants that in the same accident, his worker (Janil Raj) had filed M.A.C.A No.69 of 2019 and his income was fixed by this Court at Rs.9,000/-. The claim of the appellants in the claim petition was that he was receiving a monthly income of Rs.12,000/-. However the Tribunal has taken only Rs.6,000/- as the monthly income. It is true that there was no other evidence other than the Ext.A34 certificate produced by the legal heirs to

prove that the deceased was the Managing Partner of Vattakkuzhi Prince Jewellery. It is discernible from Ext.A34 that he was running the business and was the owner of Vattakkuzhi Prince Jewellery. He was aged only 29 years at the time of death. Taking into consideration Ext.A34 document handed over to me as well as the averments in the claim petition, I am of the view that his monthly income can be fixed at Rs.10,500/- per month and 40% future prospects. Thus, the notional monthly income after adding 40% future prospects would come to Rs.14,700/-. Accordingly, the compensation for loss of dependency has to be

recalculated. Therefore, the total compensation payable under the said head will be Rs.19,99,200/- (14,700x12x17x2/3). Since the tribunal has already awarded Rs.11,42,400/- towards loss of dependency, the appellants will be entitled to get an additional compensation of Rs.8,56,800/-.

Funeral expenses :- The learned counsel submits that

following the judgment in National Insurance Company Ltd. v. Pranay Sethi [2017 (4) KLT 662 (SC)] , it was the settled law that the funeral expenses have to be given at the rate of Rs.15,000/-, however, the tribunal granted only Rs.10,000/-, which is on the lower side. I feel that the funeral expenses awarded by the tribunal have to be enhanced to Rs.15,000/- in total. Thus, there will be an additional amount of Rs.5,000/- under the said head.

Compensation for love and affection & loss of consortium :- The learned counsel for the appellant submits that only an amount of Rs. 40,000/- was awarded as loss of consortium whereas they are entitled for Rs. 1,20,000/-. The learned Standing Counsel for the respondents submits that the tribunal has awarded Rs.40,000/- towards compensation for loss

of consortium and also awarded Rs.30,000/- towards compensation for love and affection. On a perusal of the award, I deem it appropriate that the compensation awarded under the head of love and affection has to be deducted and since there are three legal heirs, a further amount of Rs.80,000/- has to be awarded towards the compensation for loss of consortium,

> totalling to an amount of Rs.1,20,000/-. Hence, the appellants will be entitled to get an additional amount of Rs.50,000/- towards loss of consortium after deducting the compensation of Rs.40,000/- granted by the tribunal towards loss of consortium and the compensation of Rs.30,000/- granted towards loss of love and affection.

6. Thus, the impugned award of the tribunal is modified as follows; Sl. No. Head of Claim Amount Amount Modified in Total claimed awarded by appeal compensation the tribunal

1. Transportation 15,000 3,000 (not 3,000 expenses modified)

2. Damage to 1,000 1,000 (not 1,000 clothing etc. modified)

3. Funeral 10,000 10,000 5,000 15,000 expenses

4. Pain and 15,000 5,000 (not 5,000 suffering modified)

5. Compensation 30,000 30,000 (not 30,000

for love and modified) affection 6 Compensation 16,28,000 11,42,400 8,56,800 19,99,200 for loss of dependency 7 Compensation 25,000 15,000 (not 15,000 for loss of estate modified) 8 Compensation 25,000 Nil Nil Nil for loss of expectancy of life

9. Compensation (not 40,000 50,000 90,000 for loss of claimed) consortium TOTAL 17,49,000 12,46,400 9,11,800 21,58,200 Accordingly, the appeal is allowed and the

appellants/claimants are awarded an additional compensation of Rs.9,11,800/- (Rupees Nine lakh eleven thousand eight 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. 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 claimants 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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