

Vinod vs Suresh Kumar

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : MACA/90/2018

Appellant : VINOD

Respondent : Suresh Kumar

Judgement :

CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, MACA NO.
90 OF 2018 AGAINST THE JUDGMENT IN OP(MV)614/2013 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT - II, PATHANAMTHITTA / II
ADDL.M.A.C.T. APPELLANTS/APPELLANTS:

1 VINOD S/O. THANKAPPAN ACHARY, MALAYIL HOUSE,
VALLAMKULAM P.O., THIRUVALLA. 2 RAJI VINOD W/O. VINOD,
MALAYIL HOUSE, VALLAMKULAM P.O., THIRUVALLA. 3 VIJAY
VINOD S/O. VINOD, MALAYIL HOUSE, VALLAMKULAM P.O.,

THIRUVALLA, MINOR, REPRESENTED BY HIS MOTHER, THE 2ND APPELLANT HEREIN (DOB-22.10.2003). BY ADVS. SUSANTH SHAJI V.V.SHAJI

RESPONDENTS/RESPONDENTS: 1 SURESH KUMAR S/O. GOPALAKRISHNAN, THEKKEPPURATHU HOUSE, NEAR MARTHOMA COLLEGE, KUTTAPPUZHA P.O., THIRUVALLA. 2 GOPAN K. UNNITHAN S/O. A. P. KUTTAN UNNITHAN, VADAKKEDATHU GOKULAM, PANDANADU WEST P.O., CHENGANNUR. 3 UNITED INDIA INSURANCE CO. LTD. BRANCH PATHANAMTHITTA. BY ADV SMT.DEEPA GEORGE ..2.. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..3..

JUDGMENT

The quantum and the manner of award of compensation in the unfortunate cases of death of children, consequent to accidents, has long gripped the attention of the Honble Supreme Court and that of this Court.

2. In Puttamma & Ors. v. K.L.Narayana Reddy &

another [(2013) 15 SCC 45], surveying the various precedents that held the field until then, as also to certain amendments to Schedule II of the Motor Vehicles Act, 1988 (the Motor Vehicles Act for short) - which were proposed at that time - the Honble Supreme Court ruled that the Central Government had failed in its imperative duty to amend the afore Schedule, adverting to Section 163A(3) of the MV Act; and thus issued directions to the said Government to cause appropriate amendments,

keeping in mind the present cost of living. It then declared that, until such time as necessary amendments are made, the compensation in the case of death of a child below the age of five years be taken to be a consolidated sum of Rs.1,00,000/-; while in the case of a child of more than five years, as Rs.1,50,000/- ..4..

3. Prior to the afore judgment, in R.K.Malik &

another v. Kiran Pal & Ors [(2009) 14 SCC 1], the Honble Supreme Court had recommended that the notional income fixed under Section 163A of the MV Act, which was Rs.15,000/- per annum, be enhanced and increased, since it continued to exist without any amendments since 14.11.1994.

4. Imbibing the spirit of R.K.Malik (supra), in Kishan

Gopal & another v. Lala & Ors. [(2014) 1 SCC 244], in the case of a 10 year old child killed in an accident, the Honble Supreme Court fixed the notional income at Rs.30,000/- per annum.

5. Unfortunately, the amendments as ordered by the Honble Supreme Court in Puttamma (supra) never came

through because, even though the second schedule to the MV Act

Kurvan Ansari v. Shyam Kishore Murmu [2021 (6) KLT OnLine 1005], dealt with the case of death of a seven year old child in an accident, which happened in the year 2004, declared that fixing of notional income at Rs.1,50,000/- per annum for non earning members is not just and reasonable; and therefore, that, it should be enhanced prudently, adverting

..5.. to the inflation, devaluation of the Rupee and cost of living. Pertinently, the Honble Court, in the said case, fixed the notional income of the deceased at Rs.25,000/- per annum, and granted a total compensation of Rs.4,70,000/-, as recorded therein.

6. In the meanwhile, a learned Judge of this Court, in

National Insurance Company Ltd. and other v. Assainar [2019 (4) KLT 39], took note of the afore judgments, along with others, and considering the fact that Section 163A of the MV Act was introduced with effect from 14.11.1994, entered the opinion that Rs.24,000/- per annum should be adopted as the notional income even in the case of death of children, till the end of the financial year 1995-96.

7. Pertinently, however, Smt.Deepa George - learned

Standing Counsel for the respondent Insurance Company, submitted that if this Court is to follow Assainar (supra) in the case of the claimants in this case, the compensation eligible to the claimants would only be Rs.4,56,000/-; while if the ratio in Kurvan Ansari (supra) is adopted, it would rise marginally higher. She explained that this is because, in Assainar (supra), this Court has declared that the compensation eligible in the case of a child below the age of five years should be ..6.. reckoned to be a minimum of Rs.2,40,000/- per annum till 1994-1995, to be incrementally increased by Rs.12,000/- every year. She thus argued that a safer standard would be to follow Kurvan Ansari (supra), which the Honble Supreme Court delivered recently as in the year 2021.

8. The afore rival and dialectical positions being so

recorded, this Court is now called upon to consider what should be the notional income of a nine month old child, who was unfortunately lost to his parents in the accident involved in this case.

9. As seen above, an unyielding standard has not been

fixed in any of the cases, but in Kurvan Ansari (supra) - delivered in the year 2021 - the Honble Supreme Court has adopted the notional income of a seven year old child, who died in the year 2004, to be Rs.25,000/- per annum. However, in Kishan Gopal (supra), the notional income of a ten year old child, who died in an accident in the year 1992, was fixed as Rs.30,000/- per annum; but in Meena Devi v. Nunu Chand @ Nemchand Mahto & Ors [(2023) 1 SCC 204] which was delivered by the Honble Supreme Court in the year 2022, with regard to the death of a twelve year old child, in the year

..7.. 2003, the annual income was again taken to be Rs.30,000/- per annum.

10. Therefore, as matters now stand, in Meena Devi

(supra) the Honble Supreme Court has reckoned Rs.30,000/- per annum as the notional income in the case of a twelve and half year old child, in the accident which occurred in the year 2003 and I am certain this has been done taking note of all the afore aspects.

11. In the case at hand, the deceased child was nine

months old at the time of the unfortunate accident, which happened in the year 2013; and, guided by the afore precedents, surely, the notional income requires to be reckoned, taking note of inflation, devaluation of rupee and cost of living. This is more so because, in *Rajendra Singh & Ors. v. National Insurance Company Ltd. & Ors.* [(2020) 7 SCC 256], the Honble Supreme Court fixed Rs.36,000/- per annum as the notional income of a child aged twelve and a half years, who died in an accident in the year 2012, which is the most proximate year to the facts involved in this case.

12. In this regard, I am of the firm view that this Court will be justified in following the ratio in *Kurvan Ansari (supra)* and *Meena Devi (supra)* and in being led by its declarations. ..8..

Since the said judgments adopted Rs.25,000/- and Rs.30000/- respectively as the notional income for child over five years, who met with untimely death in the year 2004, and 2003 respectively, the addition of Rs.5,000/- as income per annum for the deceased in this case, would not merely be reasonable, but inevitable and justifiable. Of course, Sri.Susanth Shaji asked for a much higher figure, requesting that this Court adopt the standards reflected in *Ramachandrappa (supra)*; but I am afraid that I cannot accede to this when *Meena Devi (supra)*, in the year 2022, adopted only Rs.30,000/- as the notional income and that too, for a child of twelve and a half years, though involved in an accident of the year 2003.

13. Since the child involved in this case is much

younger and the accident occurred nearly 10 years after the one noticed in *Meena Devi (supra)* and *Kurvan Ansari (supra)*, I am certain that adoption of Rs.30,000/- per annum as the notional income, would be the most apposite in the given circumstances. Resultantly, this Appeal is allowed in part, taking the notional income of the deceased child as being Rs.30,000/- per annum and applying the applicable multiplier 15, as stipulated in Schedule II for all claims under Section 163A of ..9.. the MV Act, the amount under the head Loss of Dependency would stand revised to Rs.4,50,000/-. Added to this, the claimants/parents would be

entitled to compensation towards Filial Consortium of Rs.40,000/- each; along with Funeral

Expenses of Rs.15,000/-, as per National Insurance Company Ltd. v. Pranay Sethi [2017 (4) KLT 662 (SC)]. The appellants are thus entitled to a total additional sum of Rs.5,45,000/-, along with 7% interest from the date of claim till the date of realization, from the respondent - Insurance Company. In furtherance, the respondent - Insurance Company will

deposit the afore amount before the Tribunal within a period of two months from the date of receipt of a copy of this judgment, as agreed by them; in which event, the appellants will be at liberty to receive it as per law and to apportion it between themselves in the manner as ordered by the Tribunal. Sd/- DEVAN RAMACHANDRAN, JUDGE ACR

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