Binumol vs the Managing Partner

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Court : Kerala

Decided On : Dec-11-2023

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

Appeal No. : MACA/1406/2012

Appellant : Binumol

Respondent : The Managing Partner

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. MONDAY, THE 11TH DAY OF DECEMBER 2023/20TH AGRAHAYANA, 1945 MACA NO. 1406 OF 2012 OPMV 2551/2007 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,ERNAKULAM APPELLANTS/PETITIONERS:

1 BINUMOL, AGED 32 YEARS, W/O.LATE PRASANTH, 'PRATHEEKSHA', KALAVATH ROAD, PALARIVATTOM P.O., KOCHI - 25, ERNAKULAM DISTRICT. 2 SIDHARTH, AGED 6 YEARS, (MINOR), S/O.LATE PRASANTH, REPRESENTED BY HIS MOTHER, BINUMOL, 'PRATHEEKSHA', KALAVATH ROAD, PALARIVATTOM P.O., KOCHI - 25, ERNAKULAM DISTRICT. 3 SUSEELA SIVARAMAN, AGED 63

YEARS, W/O.SIVARAMAN, 'PRATHEEKSHA', KALAVATH ROAD, PALARIVATTOM P.O., KOCHI - 25, ERNAKULAM DISTRICT. BY ADVS. SRI.K.S.BABU SRI.ANTONY MATHEW SRI.BABU SHANKAR SMT.N.SUDHA SRI.VIPIN VISWAN

RESPONDENTS/RESPONDENTS:

1 THE MANAGING PARTNER, KERALA TRANSPORT COMPANY, YMCA ROAD, KOZHIKODE - 673001. 2 K.O.FRANCIS, S/O.OUSEPH, KOOTHUR HOUSE, UDALAKAVU, ADAT VILLAGE, KOZHIKODE - 680 554. 3 THE NEW INDIA ASSURANCE CO.LTD. REPRESENTED BY ITS MANAGER, DIVISIONAL OFFICE, KOTTAKKAL, ARYAVYDYASALA BUILDING, M.G.ROAD, ERNAKULAM - 682 016. BY ADVS. P.JACOB MATHEW MATHEWS JACOB (SR.) THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR

ADMISSION ON 11.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

JUDGMENT

The appellants are the petitioners in OP(MV) No.2551/2007 on the files of the Motor Accident Claims Tribunal, Ernakulam.

2. The said claim petition was submitted by the appellants seeking compensation for the death of one T.S. Prasanth due to the injuries sustained in a motor accident that

occurred on 24.10.2007. The first claimant was the wife, the second claimant was the son, and the 3 rd and 4th claimants were the parents of the deceased. During the pendency of the claim petition, the 3rd claimant passed away and the other claimants were declared as the legal heirs of the deceased, 3 rd claimant.

3. According to the appellants, the deceased was a self-

employed person as he was conducting a workshop along with another person under a partnership agreement with a monthly income of Rs.25,000/-. He was 32 years old at the time of the accident. The compensation was claimed in such circumstances.

4. The owner and driver of the vehicle, the 1 st and 2nd respondents in the claim petition, respectively, did not contest the :3 : matter. The 3rd respondent filed a written statement admitting the insurance coverage over the vehicle involved. But they disputed

the liability on various grounds. It was contended that the accident occurred when the car driven by the deceased was hit by the lorry insured with the 3 rd respondent and according to them, the accident was due to the negligence on the part of the deceased himself.

5. The evidence in this case consists of Exts.A1 to A11 from the side of the claimants and no evidence was adduced from the side of the appellants.

6. 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 lorry which was insured with the 3 rd respondent and being the insurer, the 3rd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.13,33,498/- which was directed to be deposited by the 3 rd respondent insurance company with interest at the rate of 8% per annum. This appeal is submitted in such circumstances by the appellants seeking enhancement of compensation. :4 :

7. Heard Smt. N. Sudha, the learned counsel appearing for the appellants and Sri. Mathews Jacob, the learned senior counsel appearing for the 3rd respondent insurance company.

8. The main contest in this case is relating to the

quantum of compensation, particularly under the head of loss of dependency. The learned counsel for the appellant pointed out that the tribunal committed an error in taking a lesser monthly income and also failed to make an addition towards future prospects. On perusal of the records, I find some force in the said contentions. It is seen from the records that, even though the monthly income of Rs.25,000/- was claimed, the tribunal accepted the same as Rs.6,000/-, which was based on the fact that, in respect of the assessment year 2006-07, the deceased declared income from business and profession as Rs.65,660/-. In addition to that, the income tax return indicated income by way of interest received from a fixed deposit, which was to the tune of

Rs.15,695/-. It is to be noted that, as per the method of computation of monthly income evolved from the principles laid down by the Hon'ble Supreme Court in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd [(2011) 13 :5 :

SCC 236] and Syed Sadiq v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735], the monthly income of an ordinary worker without any evidence can be assessed as Rs.6,000/- for the year 2007 which was the year on which the accident in question has occurred. Here in this case, there is some evidence to show that, the appellant was conducting an establishment of his own, as is evident from Ext.A4 partnership deed. Besides the same, he was an income tax assessee and was also receiving interest from the fixed deposit maintained by him. Therefore, these aspects would give some indication as to his financial situation and hence a slightly higher income than that is usually taken in respect of an ordinary worker can be accepted. In such circumstances, the monthly income is fixed as Rs.7,000/-.

9. As rightly pointed out by the learned counsel for the

appellants, the tribunal did not make any addition towards future prospects as well. In the light of National Insurance Company Ltd. v. Pranay Sethi [2017(4) KLT 662], as the deceased was aged 32 years at the time of the accident, 40% of the monthly income ought to have been added while assessing the compensation. Thus, when the compensation is calculated with

:6 : the revised monthly income and with an addition of 40% towards future prospects, the amount would come to Rs.14,11,200/- [(7000+40%)12x16x3/4]. The amount already awarded by the tribunal is Rs.8,64,000-/ and thus the addition under head of loss of dependency would come to Rs.5,47,200/-.

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

the tribunal has awarded only Rs.5,000/- each under the head of funeral expenses as well as loss of estate which are on the lower side in the light of Pranay Sethis case. Therefore, Rs.10,000/-

each is granted under those heads. Similarly, the amount awarded towards loss of consortium, which was Rs 25,000/-, was also on the lower side. As per the observations made in Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram [(2018) 18 SCC 130] and United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur [(2021) 11 SCC 780], the claimants being the wife, child and the parents were entitled to compensation at the rate of Rs.40,000/- each, thereby making a total amount of Rs.1,60,000/-, which is to be granted. At this juncture, the learned counsel for the insurance company would point out that, besides the compensation of loss of consortium, a

further amount of Rs.25,000/- was granted by the tribunal towards loss of love and affection, which was not warranted at all. The said contention has to be accepted in the light of the observations made in Satinder Kaur (supra) where the Hon'ble Supreme Court observed that when compensation is awarded for loss of consortium, no further amount needs to be granted towards loss

of love and affection. Therefore, the said amount is to be adjusted towards the additional amount granted by this Court towards the loss of consortium. Thus, the further amount payable under the head of loss of consortium is determined as Rs.1,10,000/- [160000-(25000+25000]. Accordingly, the total additional compensation receivable by the appellants is determined as Rs.6,77,200/- (547200+10000+10000+110000). In the light of the aforesaid observations and findings, this appeal is allowed. The award dated 13.06.2011 passed by the Motor Accident Claims Tribunal, Ernakulam in OP(MV) No.2551/2007 is hereby modified by granting an additional compensation of Rs.6,77,200/- (Rupees six lakhs seventy-seven thousand two hundred only) and the said amount shall be deposited by the 3rd respondent insurance company along with :8 :

interest at the rate as ordered by the tribunal and with proportionate costs within a period of three months from the date of receipt of a copy of this judgment. However, it is clarified that, as the appeal was filed with a petition to condone the delay of 264 days in filing the appeal, the 3rd respondent insurance company shall be entitled to exclude the said period of delay while computing the interest on the additional compensation.

Sd/- ZIYAD RAHMAN A.A. JUDGE ncd