

Varghese V.J. vs Samson

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Court : Kerala

Decided On : Jul-05-2023

Judge : Honourable Mr.Justice Basant Balaji

Appeal No. : MACA/1869/2012

Appellant : Varghese V.J.

Respondent : Samson

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI WEDNESDAY, THE 5TH DAY OF JULY 2023 / 14TH ASHADHA, 1945 MACA NO. 1869 OF 2012 AGAINST THE JUDGMENT IN OPMV 269/2007 OF SPECIAL C SPE/CBI- I&3 ADDITIONAL DISTRICT COURT / I ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM APPELLANTS/PETITIONERS: 1 VARGHESE V.J. AGED 19 YEARS S/O JAMES V.V, PUTHEDATH HOUSE, PUTHIYA ROAD, KAKKANAD P.O, 2 ROSE MARY V.J AGED 15 YEARS D/O JAMES V V, PUTHEDATH HOUSE, PUTHIYA ROAD, KAKKANAD P.O, MINOR, REPRESENTED BY NEXT FRIEND XAVIER V.V. VALIATHARAPARAMPIL, KALLITHARA ROAD,MARADU P.O BY ADVS. SRI.KISHOR B. SRI.AJAY JOHNS RESPONDENTS/RESPONDENTS: 1 SAMSON NO 33/835, MALIAKKAL,

VENNALA P.O, KOCHI 682028 2 JAMES V.V S/O VAREETHU, VALIAPARAMBIL, PUTHEDATHU HOUSE, PUTHIYA ROAD, KAKKANAD P.O, KOCHI 682030 3 NATIONAL INSURANCE COMPANY LTD BRANCH NO 1 PB NO 1796, SOUTH JUNCTION, CHITTOOR ROAD, KOCHI 682016 OTHER PRESENT: SMT DEEPA GEORGE R3 THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 05.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 05th day of July, 2023 The appellants are the petitioners in O.P. M.V No. Ernakulam.

2. The claimants filed this application under Section 166

of the Motor Vehicles Act claiming Rs. 14,40,000/- (limited to Rs. 6,00,000/-)/- as compensation for the death of one Rosely, the mother of the appellants/claimants, which happened on 12.09.2006 at 8.30 a.m. the deceased was travelling as a pillion rider in a Motorcycle bearing registration No. KL-7 / AU 4741 from east to west through Vennala Puthiya road. The motorcycle was ridden by the 2 nd respondent with excessive speed and negligent driving as to endanger human life. When they reached in front of KENT Illam, the 2 nd respondent turned the bike negligent, and it skidded and the deceased fell down into the road and sustained a grievous head injury. 1 st respondent is the owner, 2 nd respondent is the driver, and the 3rd respondent is the insurer of the offending vehicle. Respondent Nos. 1 and 2 remained exparte. The 3rd respondent alone filed a written statement denying negligence on the part of the 2 nd respondent. The insurance policy of the offending vehicle was admitted as a package policy.

3. The Tribunal relied upon Exts. A1 to A12 and

awarded a compensation of Rs. 6,98,125/- with interest @ 7.5% per annum from the date of petition till realisation. Aggrieved by the quantum of compensation on various heads, this appeal is filed by the petitioners.

4. I have heard Sri. Kishor. B, the learned counsel for the appellants, and Smt. Deepa George, the learned counsel for the 3rd respondent.

5. The learned counsel appearing for the appellants

submits that the deceased was aged 35 years and was a tailor by profession. The date of the accident is 12.09.2006. She was admitted to hospital an inpatient for 65 days and, thereafter, succumbed to the injuries. The petitioners claimed Rs. 5,000/- as the monthly income of the deceased. The Tribunal took the income as Rs. 3,500/-. The learned counsel for the appellants submits that going by the decision in Ramachandrappa V. Manager, Royal Sundram

Alliance Insurance Co. Ltd[(2011) 13 SCC 236], the minimum amount to be taken as monthly income of a coolie who met with an accident that happened in the year 2006, is Rs. 5,500/-. But the petitioners claim was only Rs. 5,000/-. Hence, I am inclined to take the monthly income of the deceased as Rs. 5,000/-. Since the deceased was aged below 40 years, 40% has to be added towards future prospects. The proper multiplier to be applied is 16, but the Tribunal took it as 17. Since the deceased has survived her two children, 1/3 has to be deducted towards the personal expenses of the deceased. Therefore, the compensation for the permanent disability is calculated as $7,000 \times 12 \times 16 \times \frac{2}{3} = 8,96,000/-$.

6. As far as funeral expenses are concerned, the Tribunal has awarded only 2,000/-. The apex Court in National Insurance Co.Ltd V. Pranay Sethi - [(2017(4) KLT 662 (SC)], the minimum amount towards funeral

expenses should be Rs. 15,000 with 10% escalation, which would comes to Rs. 16,500/-. Therefore, the claimants are entitled to Rs. 14,500/- more under the head.

7. For loss of estate, the Tribunal has awarded only Rs.

10,000/-. As per the dictum laid down in Pranay Sethi (Supra), the minimum amount to be awarded under loss of estate is 15,000/- + 10% increase. Thus, the award amount under the head is enhanced to Rs. 16,500/-.

8. The claimants being children of the deceased, are

entitled to loss of consortium at the rate of Rs. 40,000/- + 10% increase, as per decision Pranay Sethi (supra). Therefore, the claimants are entitled to Rs. 40,000 + 10% increase = 44,000 x 2 = 88,000/-.

9. Since is compensation awarded under loss of

consortium, compensation under the head of love and affection cannot be granted. Therefore, Rs.15,000/- awarded under the head of love and affection is set aside.

10. It is to be noted that Smt. Rosely was admitted to

hospital as an inpatient for 65 days, and she succumbed to the injuries. Therefore, definitely, she would have suffered much pain and suffering. Even though the pain and suffering cannot be compensated in terms of money, the legal heirs are entitled to pain and suffering which had to suffer due to their mother admitted to the hospital and thereafter succumbed to the injuries. Therefore, Rs. 15,000/- is awarded under the head of pain and suffering sustained. Accordingly, the following enhancements are made to the award passed by the Tribunal: Sl. The compensation claimed Amt. Awarded Amt. Enhanced No. under different heads by Tribunal in appeal (Rs.) (Rs.) 1 Loss of dependency 4,76,000/- 8,96,000/-

2	Funeral expenses	2000/-	16,500/-	3
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Amount enhanced -10,32,000 - 5,18,000 = Rs. 5,14,000/-

11. In the result, the appeal is allowed, and the appellants are entitled to an enhanced compensation of Rs. 5,14,000/- with interest @ 7.5% per annum from the date of petition till realisation.

12. It is seen that, as per the order dated 25.05.2023, in

C.M. Appl. No. 2202 of 2012, this Court had held that in the event of enhancement in the compensation, the appellant would not be entitled to interest for the period of 391 days, being the delay in filing the appeal. Hence, the enhanced compensation awarded by this Court will not carry interest for 391 days.

13. All other findings entered by the Tribunal stand confirmed. If any amounts have already been paid, the same shall be granted set off. The claimants shall produce the

details of the Bank account before the Insurance Company/Tribunal within one month from the date of receipt of a certified copy of this judgment, and amount shall be transferred to the Bank account directly through NEFT/RTGS mode, within a period of one month thereafter. If the Bank account is not furnished within the time stipulated, it is made

clear that no interest shall run on the enhanced amount after the period stipulated by this Court. If the enhanced amount is higher than the amount claimed in the Original Petition, the appellants will have to pay the balance court fee. Sd/-
BASANT BALAJI, JUDGE mtk

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