

Bridget vs Vinod

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Court : Kerala

Decided On : Mar-17-2023

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : MACA/1599/2013

Appellant : Bridget

Respondent : VINOD

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS FRIDAY, THE 17TH DAY OF MARCH 2023 / 26TH PHALGUNA, 1944 MACA NO. 1599 OF 2013 AGAINST THE ORDER/JUDGMENT IN OPMV 455/2010 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALA APPELLANTS-PETITIONERS:

1. THOMAS, S/O. JOSEPH (DIED).
2. BRIDGET, W/O. THOMAS, VALLITHANAM HOUSE, KAINAKARY KARA & VILLAGE, KAINAKARY.
3. MARIAMMA THOMAS, D/O. THOMAS, VALLITHANAM HOUSE, KAINAKARY KARA & VILLAGE, KAINAKARY.

4. MINI THOMAS, D/O. THOMAS, VALLITHANAM HOUSE, KAINAKARY KARA & VILLAGE, KAINAKARY.

5. MANJU THOMAS, D/O. THOMAS, VALLITHANAM HOUSE, KAINAKARY KARA & VILLAGE, KAINAKARY.

6. METTY THOMAS, D/O. THOMAS, VALLITHANAM HOUSE, KAINAKARY KARA & VILLAGE, KAINAKARY.

7. MERRY THOMAS, D/O. THOMAS, VALLITHANAM HOUSE, KAINAKARY KARA & VILLAGE, KAINAKARY.

8. MERLY THOMAS, D/O. THOMAS, VALLITHANAM HOUSE, KAINAKARY KARA & VILLAGE, KAINAKARY. MACA No.1599 of 2013 2 BY ADVS. SRI.MATHEW JOHN (K) SRI.DOMSON J.VATTAKKUZHY RESPONDENTS-RESPONDENTS:

1. VINOD, S/O NARAYANAN, HOUSE NO T.C. 11/245, KARTHIKA HOUSE, NEAR VELLAYAMABALAM JUNCTION, NANDANCODE, KAVADIYAR VILLAGE, TRIVANDRUM 695003.

2. THE NATIONAL INSURANCE COMPANY LTD. REPRESENTED BY ITS MANAGER PALA BRANCH - 686 575. BY ADV.SRI.SARAH SALVY FOR R2. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09.03.2023, THE COURT ON 17.03.2023 DELIVERED THE FOLLOWING: MACA No.1599 of 2013 3

SOPHY THOMAS, J.

----- MACA No.1599 of 2013
----- Dated this the 17th day of March, 2023

JUDGMENT

The claimants in OP(MV) No.455 of 2010 on the file of Motor Accidents Claims Tribunal, Pala, are the appellants herein, impugning the award on the ground of

inadequacy of compensation.

2. The original claimant Sri.Thomas met with a road traffic

accident on 07.01.2010 at about 7.40 p.m while he was trying to cross the road at Kainakary junction in Changanassery-Alappuzha public road. KL-1/AL 6983 car driven by the 1st respondent, in a rash and negligent manner, knocked him down and he sustained

serious injuries. He was hospitalised and he was in an unconscious state and on continuous treatment till he died on 13.06.2010. On his death, his legal heirs were impleaded as additional claimants 2 to 8. Though the Tribunal found that the original claimant died due to the injuries suffered in the accident, MACA No.1599 of 2013 4 only Rs.6,63,202/- was awarded as compensation against their claim of Rs.10,64,000/-. Hence this appeal.

3. The 1st respondent was the owner cum driver of the

offending car and the 2nd respondent was its insurer. The accident, injuries and death of the original claimant are not in dispute. The policy of the offending vehicle, as on the date of accident, is admitted by the 2nd respondent/insurer, though negligence from the part of the 1st respondent is denied.

4. Before the Tribunal, PWs 1 and 2 were examined and Exts.A1 to A10 and B1 were marked.

5. Now let us see whether any interference is warranted in the impugned award.

6. Heard Sri.Mathew John, learned counsel appearing for the appellants and Smt.Sarah Salvy, learned counsel appearing for the 2nd respondent.

7. According to the appellants, the original claimant Sri.Thomas was a 64 year old agriculturist, earning monthly income of Rs.5,000/-. But, the Tribunal fixed his notional income as Rs.4,000/-. It is true that an agriculturist may not have any document to prove his monthly income. But, going by the decision MACA No.1599 of 2013 5 Ramchandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited (AIR 2011 SC 2951), even a casual labourer was eligible to get

his notional income fixed at

Rs.7,500/-, in the year 2010. But, here, even according to the deceased original claimant, he was earning monthly income of Rs.5,000/- only. So, we can fix his notional income at that rate.

8. Though the claim petition was filed before the Tribunal as an injury claim, subsequently, the original claimant died and so it was treated as a death claim. Learned Tribunal found that the deceased remained in hospital for a total period of 123 days with

multiple fractures. The evidence given by PW2-doctor also was sufficient to show that the injured person was under prolonged treatment due to fractures and head injury and he died after discharge from hospital. The treatment given to the injured from the hospital of PW2 was only nursing care and palliative care. Moreover, PW2 stated that when the injured was discharged on

13.05.2010, he was in an unconscious state. Since no more treatment remained to be done for that patient, he was discharged from hospital. So, nothing more is needed to arrive at a

conclusion that though the original claimant died after discharge

MACA No.1599 of 2013 6 from hospital, his death was due to the injuries suffered in the accident which occurred on 07.01.2010.

9. We have to assess the compensation for loss of dependency, taking the monthly income of the deceased at

Rs.5,000/- as fixed by us. Since the original claimant was aged 64, no addition is permissible towards future prospects. He was having wife and six children, but only the wife was found to be the dependent. So, 1/3rd has to be deducted towards his personal expenses. So, the balance would be Rs.3,333/-. The multiplier applicable is 7, as he was aged 64. So, the compensation for loss of dependency could be Rs.2,79,972/-. The Tribunal already awarded Rs.1,60,000/- under the head loss of dependency. So, the balance eligible is Rs.1,19,972/-.

10. Towards loss of love and affection and loss of

consortium, learned Tribunal awarded Rs.25,000/- and Rs.20,000/- respectively. The appellants herein are the wife and six children of the deceased. Though the Tribunal found that only the wife of the deceased was dependent on the deceased, as far as love and affection of a father is concerned, the children despite they being matured, married or age old, they lost the love of their

MACA No.1599 of 2013 7

father forever. So, this Court is inclined to award Rs.10,000/- each to appellants 3 to 8 for loss of love and affection of father. Going by the decision National Insurance Company Ltd. vs. Pranay Sethi and Others [AIR 2017 SC 5157], this Court is inclined to award Rs.40,000/- to the wife for loss of consortium. So, the appellants are eligible to get Rs.1,00,000/- in total instead

of Rs.45,000/- awarded by the Tribunal. So, they will get the balance amount of Rs.55,000/- under the head loss of consortium/love and affection.

11. Towards loss of earning, the Tribunal awarded

Rs.20,000/- . Since the original claimant died and the Tribunal awarded under the head loss of earning is liable to be deducted.

12. For pain and suffering, the Tribunal awarded Rs.30,000/-. Since it was a death claim, the legal heirs were not eligible to get compensation for pain and suffering of the deceased. So, Rs.30,000/- awarded under that head also is liable to be deducted.

13. So, the appellants are eligible to get Rs.1,24,972/- as enhanced compensation, on deducting Rs.50,000/-, awarded in MACA No.1599 of 2013 8 excess by the Tribunal towards loss of earning and pain and suffering.

14. Learned Tribunal while awarding compensation of

Rs.6,63,202/- found that the accident occurred due to contributory negligence from the part of the deceased. It was found that the deceased was crossing the road at the time of accident and moreover, he was in an inebriated condition. So, the Tribunal came to the conclusion that, since the deceased crossed the road

in a drunken state, he contributed towards the accident. In order

to reach that conclusion, the Tribunal relied on Ext.B1 wound certificate of the deceased, which will show that he had smell of alcohol. When PW2-doctor was examined to prove the condition of the injured when he was discharged from hospital, learned counsel for the 2nd respondent confronted the doctor with Ext.B1 document, and got it marked subject to admissibility. PW2 would say that, in Ext.B1 certificate, the plus signs shown towards smell of alcohol might have been indicating excess consumption of

alcohol. But, the doctor who issued that certificate was not examined by the respondent. There is nothing to show that the deceased had consumed alcohol exceeding the permissible limit at MACA No.1599 of 2013 9 the time of accident. Mere mention in the wound certificate, that there was a smell of alcohol, is not sufficient to hold that he was

intoxicated. Since Ext.B1 certificate was not proved through the doctor who issued the same, and no other independent evidence is there to show that the deceased was intoxicated and was unable to take care of himself at the time of accident, the Tribunal cannot be justified in finding that the accident occurred due to his

contributory negligence. There is no factual foundation for the Tribunal to fix the contributory negligence from the part of the deceased at 30%.

15. Ext.A5, copy of final report, shows that the accident occurred due to the rash and negligent driving of KL-1/AL 6983 car

by the 1st respondent. When there is police charge against the 1st respondent, after a thorough investigation, without adducing any independent evidence to prove the contra, the Tribunal ought not have fixed 30% contributory negligence from the part of the deceased.

16. In New India Assurance Co. Ltd vs. Pazhaniammal (2011 (3) KLT 648)], a Division Bench of this Court held that, as a general rule it can be accepted that production of charge sheet is MACA No.1599 of 2013 10 prima facie sufficient evidence of negligence for purpose of a claim

under S.166. If any of the parties do not accept such charge sheet, burden must be on such party to adduce evidence. If Court feels that charge sheet is collusive, Tribunal can record that charge sheet cannot be accepted and call upon the parties, at any stage, to adduce oral evidence of accident and alleged negligence. In such case, issue of negligence must be decided on other evidence, ignoring charge sheet.

17. In the case on hand, the police charge is not suggesting any contributory negligence from the part of the deceased.

18. So, this Court is inclined to set aside the finding of the Tribunal that the deceased contributed 30% of the negligence to cause the accident.

19. The Tribunal awarded Rs.6,63,202/-, and after reducing

30% towards contributory negligence, awarded Rs.4,64,241/- and so, the appellants are entitled to get the balance amount of Rs.1,98,961/- (6,63,202-4,64,241), by setting aside the finding of contributory negligence from the part of the deceased. MACA No.1599 of 2013 11 Amount Amount Amount Difference to Head of claim awarded by the awarded in deducted in be drawn as Tribunal appeal appeal enhanced compensation

(1) (2) (3) (4) (5)

Loss of Rs.1,60,000/- Rs.2,79,972/- - Rs.1,19,972/- dependency Loss of earning Rs.20,000/- - Rs.20,000/- - Pain and Rs.30,000/- - Rs.30,000/- - suffering Loss of love and Rs.45,000/- Rs.1,00,000/- - Rs.55,000/- affection/loss of (25000+20000) (40000+60000) consortium Total Rs.2,55,000/- Rs.3,79,972/- Rs.50,000/- Rs.1,74,972/- Net amount eligible is : Rs.1,24,972/- (174972-50000) Total amount awarded by the Tribunal Rs.6,63,202/- Total amount awarded after 30% reduction for Rs.4,64,241/- contributory negligence Difference to be drawn on setting aside

the finding Rs.1,98,961/- of contributory negligence

20. In this appeal, we have awarded enhanced

compensation of Rs.1,24,972/-. Including Rs.1,98,961/- which was deducted on account of contributory negligence, the appellants are eligible to get Rs.3,23,933/- (1,24,972+1,98,961) in total. The 2nd respondent/insurer is directed to deposit Rs.10,000/- MACA No.1599 of 2013 12

each in the Bank Account of appellants 3 to 8 and the balance amount in the Account of the 2nd appellant with interest @ 7.5% per annum from the date of petition till the date of deposit within a period of two months from the date of receipt of a copy of this judgment. The deposit must be in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06/09/2019 and clarified in O.M.No.D1/62475/2016 dated 07/11/2019 after deducting the liabilities, if any, of the appellants towards Tax, balance court fee and legal benefit fund.

The appeal is allowed accordingly. No order as to costs. Sd/- SOPHY THOMAS
JUDGE smp

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