Binitha vs Praveen

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Court : Kerala

Decided On : Dec-22-2023

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

Appeal No. : MACA/1212/2016

Appellant : Binitha

Respondent : Praveen

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945 AGAINST THE AWARD DATED 06.10.2015 IN OP(MV) NO.1223/2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA APPELLANTS/PETITIONERS: 1 BINITHA 2 NANDU KRISHNA (MINOR) 3 NANDANA KRISHNA (MINOR) 4 NIKHIL KRISHNA (MINOR) 5 PANKY BY ADVS. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL) SRI.A.R.DILEEP SRI.MANU SEBASTIAN SRI.P.J. JOE PAUL RESPONDENTS/RESPONDENTS: 1 PRAVEEN LEKHAM VEEDU, SANATHANAM WARD, MULLACKAL, ALAPPUZHA -688 001. 2 GEETHA DEVI LAKSHMI, SANATHANAM WARD, ALAPPUZHA -688 001. 3 ROYAL SUNDARAM ALLIANCE INSURANCE CO.LTD. D1, 2ND FLOOR,

AMRITA NIVAS, KPCC JUNCTION, M.G.ROAD, COCHIN-1. BY ADVS. SRI.P.JACOB MATHEW SRI.MATHEWS JACOB SR. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 22.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellants are the petitioners in O.P.(M.V.) No.1223/2010 on the files of the Motor Accident Claims Tribunal, Alappuzha. The said claim petition was submitted by the appellants seeking compensation for the death of one Nandanan due to the injuries sustained in a motor accident that occurred on 09.05.2010.

2. According to the appellants, the accident occurred

when the bicycle ridden by the deceased was hit by a car bearing Registration No.KL 4/N 4847 driven by the 1st respondent. The said vehicle was owned by the 2nd respondent and was insured with the 3rd respondent herein. The deceased was aged 37 years at the time of the accident and was a fisherman with a monthly income of Rs.6,000/-. The 1st appellant was the wife, the appellants 2 to 4 were the minor children of the deceased, and the 5th respondent was the mother of the deceased. The claim petition was submitted in such circumstances.

3. The respondents 1 and 2 did not contest the matter, and the 3rd respondent filed a written statement admitting the

coverage of the policy. However, they contended that there was a violation of the policy conditions on the part of the insured. The quantum of compensation was also disputed by them.

4. The evidence in this case consists of Exts.A1 to A7 from the side of the appellants and no evidence was adduced by the respondents. After the trial, the Tribunal came to the

conclusion that the accident occurred due to negligence on the

part of the 1st respondent, and being the insurer, the 3rd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.8,94,500/- and the said amount was directed to be deposited by the 3rd respondent with interest @ 9% per annum from the date of petition till realisation. This appeal is submitted in such circumstances seeking enhancement of compensation.

5. Heard Sri.P.J. Joe Paul, learned counsel appearing for the appellants and Sri.P. Jacob Mathew, learned counsel appearing for the 3rd respondent Insurance Company.

6. The main challenge in this case relates to the quantum of compensation under the head of loss of dependency. It was

contended that the monthly income taken by the Tribunal was on the lower side, and besides, the Tribunal did not make any addition towards future prospects. After considering the materials placed on record, I find force in both the said contentions. As regards the monthly income, even though the claim was for Rs.6,000/-, the Tribunal accepted only Rs.5,000/-. The learned counsel submits that even though the monthly income claimed was Rs.6,000/-, considering the facts and circumstances, a higher monthly income ought to have been taken by the Tribunal. He also

places reliance upon Minu Rout v. Satya Pradyumna Mohapatra [(2013) 10 SCC 695] where the Honourable Supreme Court took the monthly income higher rate than claimed in the claim petition. The said contention has to be accepted. It is to be noted that, the usual method of computation of monthly income adopted by this Court is on the basis of the principles laid down by the Honble Supreme Court in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd [(2011) 13 SCC 236], and Syed Sadiq v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735] where the monthly

income is to be taken as Rs.4,500/- for an ordinary worker even without any evidence for the year 2004. For assessing the monthly income for the subsequent years, Rs.500/- is to be added per year. When that method of computation is adopted in this case, the monthly income can be fixed in this case as Rs.7,500/- since the accident occurred in the year 2010. As rightly pointed out by the learned counsel for the appellants, in the light of the observations made by the Honourable Supreme Court in Minu Rout case (supra), nothing would preclude this Court from taking a higher income than claimed, if this Court is convinced of the fact that adoption of such higher income is necessary to ensure just compensation. In this case, as already observed above, when adopting the method of computation that this Court usually follows, the monthly income could be Rs.7,500/- and therefore, I am inclined to accept the said amount as the monthly income.

7. The next aspect is relating to the addition to be made

towards future prospects. Admittedly he was a person coming within the age group of below 40 years and therefore, an addition of 40% has to be made in the light of National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]. While reassessing the compensation in the light of the above aspects, the amount of compensation under the head of loss of dependency would come to Rs.14,17,500/- (7,500 + 40%) x 12 x

15 x). The amount already awarded by the Tribunal is Rs.6,75,000/- and thus the additional compensation would come to Rs.7,42,500/-. Besides the same, a further sum of Rs.5,000/- is to be granted under funeral expenses as the amount awarded is Rs.10,000/- only. As per Pranay Sethi, the proper amount is Rs.15,000/- and hence, the said amount is awarded as an additional amount. No amount is seen awarded towards loss of estate, whereas the amount prescribed under the said head in Pranay Sethis case, is Rs.15,000/-. The said amount is also awarded.

8. Thus, the additional compensation receivable by the

appellants is determined as Rs. 7,62,500/- (7,42,500 + 5,000, + 15,000). In the light of the aforesaid observations and findings this appeal is allowed. The award dated 06.10.2015 in O.P(M.V.) No.

Alappuzha is hereby modified by granting and additional compensation of Rs. 7,62,500/- (Rupees seven lakh and sixty two thousand Five hundred only) and the said amount shall be deposited by 3rd respondent Insurance Company with interest @ 8% per annum from the date of petition till realisation. The said deposit shall be made within a period of three months from the date of receipt of a copy of this judgment.

Sd/- ZIYAD RAHMAN A.A. JUDGE scs