Joseph Sebastian vs Libu Joseph

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Court : Kerala

Decided On : Jun-01-2023

Judge : Honourable Mr.Justice Murali Purushothaman

Appeal No. : MACA/2147/2013

Appellant : Joseph Sebastian

Respondent : Libu Joseph

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN THURSDAY, THE 1ST DAY OF JUNE 2023 / 11TH JYAISHTA, 1945 MACA NO. 2147 OF 2013 AGAINST THE AWARD IN O.P(MV) N0. 226/2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA APPELLANT/PETITIONERS :- 1 JOSEPH SEBASTIAN, S/O.SEBASTIAN, VELLAMARUTHUNKAL HOUSE, PANDIPPARA KARA, THANKAMANY VILLAGE, IDUKKI DISTRICT. 2 ELSY JOSEPH, W/O.JOSEPH, VELLAMARUTHUNKAL HOUSE, PANDIPPARA KARA, THANKAMANY VILLAGE, IDUKKI DISTRICT. BY ADVS. SRI.MATHEW JOHN (K) SRI.DOMSON J.VATTAKUZHY RESPONDENTS/RESPONDENTS :- 1 LIBU JOSEPH PENDANATHIL HOUSE, MATTATHILPARA POST, KADANADU-686523. 2 THE MANAGER NATIONAL INSURANCE COMPANY LTD., PALA

BRANCH-686575. BY ADV.SRI.A.R.GEORGE THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 01.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners 1 and 2 in O.P.(M.V) No.226 of 2011 on the file of the Motor Accidents Claims Tribunal, Pala has preferred this appeal aggrieved by the amount of compensation awarded by the Tribunal for the death of their son Mathew Joseph in a motor vehicle accident. The petitioners 3 and 4 in the original petition, the siblings of the deceased are not parties to this appeal. The status of the parties is referred to as it appears in the claim petition.

2. According to the petitioners, on 28.12.2010, while the

deceased Mathew Joseph was travelling on a motorcycle, another motorcycle bearing Registration No.KL-35/A-158 driven by the first respondent, hit against his motorcycle and he succumbed to the injuries at the hospital, after a period of 11 days. The petitioners claimed an amount of Rs.10,81,000/- as compensation for the death of the deceased.

3. Before the Tribunal, the insurance company admitted that the

vehicle driven by the first respondent was having a valid policy. However, they contended that there is a violation of the conditions of policy as the first respondent had no valid driving licence to drive the motorcycle at the time of the accident. They also contended that the amount claimed as compensation is excessive.

4. The Tribunal found that the accident happened due to the negligence of the first respondent. The Tribunal awarded an amount of Rs.5,95,500/- as compensation under various heads.

5. The deceased was a bachelor. His date of birth is 15.12.1985. He was a mason and according to the petitioners, he was drawing a salary of Rs.9,000/- per month.

6. The Tribunal found that the deceased had completed 25

years of age and was walking 26 years at the time of death. The Tribunal took the multiplier as 11, taking into consideration the age of the mother of the deceased. As held by the Apex Court in Sarla Varma and Others v. Delhi Transport Corporation [(2009) 6 SCC 121], it is the age of the deceased which has to be considered for determining the multiplier. In Meera P.O and Another v. Ananda P.Naik and Others [2022 (1) KHC 591], this Court held that the multiplier to be adopted is the specified age mentioned in the table in Sarla Varma (supra) and not the running of the age into the next group. Since the date of birth of the deceased is 15.12.1985, the multiplier to be adopted is 18.

7. The deceased was a mason. In the absence of any other

evidence as regards the income of the deceased, his income can be fixed notionally. Going by the guidelines in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [2011 (13) SCC 236], the notional monthly income of the deceased can be taken as Rs.7,500/-. 40% of the income has to be added towards future prospects, National Insurance Company Limited v. Pranay Sethi [2017 (16) SCC 680], therefore, the figure arrived at is Rs.10,500/-. The deceased being a bachelor, of the income has to be deducted towards personal and living expenses, Pranay Sethi (supra). Accordingly, I refix the compensation payable under the head loss of dependency as Rs.11,34,000/- [(Rs.10,500/- x 12 x 18 x 1/2]. Since an amount of Rs.3,96,000/- has already been awarded under the said head, the petitioners are entitled for Rs.7,38,000/- as enhanced compensation for loss of dependency.

8. Towards pain and sufferings, an amount of Rs.25,000/- has

been awarded by the Tribunal. As held by the Apex Court in Oriental Insurance Company v. Kahlon [AIR 2021 SC 3913] no amount can be paid to the petitioners towards pain and sufferings. Therefore, the amount of Rs.25,000/- has to be deducted from the total compensation.

9. Towards loss of estate, only an amount of Rs.5,000/- has

been awarded. As per the decision of the Apex Court in Pranay Sethi (supra), the petitioners are entitled for an amount of Rs.15,000/- as compensation for loss of estate. Accordingly, the petitioners entitled for an additional amount of Rs.10,000/- under the said head.

10. Towards funeral expenses, the Tribunal has awarded only an

amount of Rs.10,000/-. The petitioners are entitled for an amount of Rs.15,000/- under the said head, Pranay Sethi (supra). Therefore, an additional sum of Rs.5,000/- is granted.

11. Towards loss of love and affection, an amount of Rs.5,000/-

> has been awarded. The petitioners 1 and 2, being the parents of the deceased, are entitled for an amount of Rs.40,000/- each for filial consortium. Accordingly, they are granted an amount of Rs.80,000/-. As per the decision in United Insurance Company Limited v. Satinder Kaur Alias Satwinder Kaur and Another [(2021) 11 SCC 780] when compensation is paid under the head of loss of consortium no separate amount can be awarded under the head loss of love and affection. Therefore, the amount of Rs.5,000/- awarded under the head loss of love and affection has to be deducted.

12. I find that the compensation awarded under other heads is just and reasonable.

13. Accordingly, the petitioners are entitled for an enhanced amount of Rs.8,03,000/- (7,38,000 + 10,000 + 5,000 + 80,000 - 25,000 - 5,000).

14. The 2nd respondent Insurance shall deposit the said amount

with 9% interest per annum from the date of petition till the date of deposit along with proportionate costs within a period of two months from the date of receipt of a copy of this judgment. The enhanced amount shall be apportioned among appellants/petitioners 1 and 2 as per the award. The order of pay and recovery as against the first respondent is not disturbed and the insurer can recover the enhanced amount from the first respondent. The appeal is allowed as above.

Sd/- MURALI PURUSHOTHAMAN JUDGE SMA