

Nisha Sareesh vs Jayesh

Nisha Sareesh vs Jayesh

SooperKanoon Citation : sooperkanoon.com/1356048

Court : Kerala

Decided On : Feb-13-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : MACA/2371/2013

Appellant : Nisha Sareesh

Respondent : Jayesh

Judgement :

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH MONDAY, THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944 MACA NO. 2371 OF 2013 AGAINST THE ORDER/JUDGMENT IN OPMV 535/2010 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA DATED 29.12.2012 APPELLANTS/PETITIONERS:

1 NISHA SAREESH W/O.LATE SAREESH, PADIKAPALLIL HOUSE, KIZHUVANKULAM P.O., CHERPUNKAL. 2 P.N.PARAMESWARAN F/O.LATE SAREESH, PADIKAPALLIL HOUSE, KIZHUVANKULAM P.O., CHERPUNKAL. 3 SUSEELA PARAMESWARAN M/O.LATE SAREESH, PADIKAPALLIL HOUSE, KIZHUVANKULAM P.O., CHERPUNKAL. 4 SARAYOO SAREESH D/O.LATE SAREESH, PADIKAPALLIL HOUSE, KIZHUVANKULAM P.O., CHERPUNKAL, REPRESENTED BY MOTHER NISHA SAREESH. BY ADV DR.GEORGE ABRAHAM

RESPONDENTS/RESPONDENTS:

1 JAYESH,S/O.NARAYANAN, VALLIYIL HOUSE, THALAPPALAM P.O., KOTTAYAM DISTRICT. 2 JITHIN, S/O.VIJAYAN, ALAPPATTUMANDAPATHIL HOUSE, PLASSANAL P.O., MELAMPARA. 3 THE ORIENTAL INSURANCE CO.LTD. BRANCH, MUNDAKKAYAM. BY ADVS.SRI.P.C.HARIDAS SRI.VPK.PANICKER SRI.P.C.HARIDAS SRI.VPK.PANICKER THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP

FOR ADMISSION ON 13.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

Dated this the 13th day of February, 2023 This appeal is directed against an order passed by Motor

Accidents Claims Tribunal, Pala on 29.12.2012 in OP(MV) No. 535 of 2010. The appellants are the petitioners before the Tribunal. The above Original Petition was moved by them seeking for a sum of `6,00,000/- as compensation in favour of them for the death of one Mr.Sareesh, aged 31 years in a motor accident occurred at 8.30 p.m. on 29.12.2009.

2. Mr.Sareesh was riding a motor cycle bearing registration No.KL 31/4137 from Erattupetta to Pala and it was hit by another motorcycle bearing registration No.KL-5/U-2793 and thereby

sustained serious injuries. While being transported to Medical College Hospital, Kottayam for treatment, he died. Alleging that the motor accident was occurred due to rash and negligent riding of the motorcycle bearing registration No.KL-5/U-2793 by its rider and claiming for a sum of `6,00,000/- as compensation, the above Original Petition was moved before the Tribunal. The rider,

-:3:- owner and insurer of the offending motorcycle were arrayed as respondents 1 to 3 in the Original Petition.

3. All respondents were served with notice. The driver and owner did not contest the Original Petition. Insurer of the vehicle as the 3rd respondent had filed written statement admitting insurance coverage for the motorcycle bearing registration

No.KL-5/U-2793 as on date of accident. It was contended that the 2nd respondent had ridden the motorcycle without a valid and effective driving license and therefore is devoid of authorisation to ride it at the relevant time. Accordingly exoneration from liability was sought by the 3rd respondent for violation by the insured of a condition in the policy issued by it. Age, occupation and monthly income of the deceased were disputed. Compensation claimed is also disputed for its exorbitant nature.

4. Before the Tribunal, parties had adduced documentary

evidence. On the side of the petitioners, Exts.A1 to A6 and on the side of the 3rd respondent Ext.B1 was marked. On the basis of the said evidence `5,95,500/- was arrived at by the Tribunal as the compensation payable and the 3rd respondent insurer was directed to deposit the same with interest at the rate of 7.5% per -:4:- annum from the date on which the Original Petition was filed till the date of realisation of the amount alongwith proportionate costs. The 3rd respondent was also directed to get recovery of the amount from 1st and 2nd respondents jointly and severally, after depositing the same in favour of the petitioners, since the 2nd respondent was proved as not holding a valid and effective driving license to ride the motorcycle as on date of accident.

5. It is contended by Dr.George Abraham, the learned

counsel appearing for the appellants that the Tribunal had fixed Rs.4,000/- as the monthly income of the deceased on a notional basis and compensation for loss of dependency was calculated on its basis. According to the learned counsel, the monthly income fixed is too low and disproportionate to the year in which the motor accident was occurred and therefore, interference is warranted. The learned

counsel has further contended that though the petitioners are entitled to get `16,500/- towards

funeral expenses, the Tribunal awarded only `5,000/-. The learned counsel has also pointed out that as compensation towards loss of estate, the Tribunal failed to award compensation and thereby denied a sum of `16,500/-, which they are entitled to:-

to get. The attention of this Court is also drawn to an error crept into while awarding compensation towards loss of consortium. Though each of the petitioners are entitled to get `44,000/-, the Tribunal confined grant of compensation to `15,000/- in favour of the 1st petitioner. It is further contended that the deceased being a self employed man aged 31 years, in view of National Insurance Co.Ltd. V. Pranay Sethi and Others [2017 (4) KLT 662 (SC)] 40% is liable to be added to the monthly income fixed, in consideration of loss of future prospects. According to him, the Tribunal failed to do so and thereby is unjustified. It is further contended that 1/4th is required to be deducted from the monthly income in consideration of the personal expenditure liable to be met with by Mr.Sareesh, had he not been died in the motor accident.

6. It is urged by the learned counsel on behalf of the 2 nd

respondent that the petitioners had raised a claim in the Original Petition that Mr.Sareesh was getting only `6,000/- as monthly income and therefore, a modified sum cannot be taken as his monthly income. He also urged that `6,00,000/- being the claim for compensation and in the event of `5,95,500/- being the -:-6:- maximum sum stands awarded, a claim for an enhanced compensation is unjust and unreasonable.

7. It is contended by the learned counsel for the 3 rd

respondent that in a context where the petitioners failed to establish the monthly income of the deceased as claimed by them, the Tribunal cannot be found fault with in fixing `4,000/- as his monthly income on a notional basis. According to him, compensation for loss of dependency being calculated based on the monthly

income notionally fixed and adopting 16 as the correct multiplier, interference with that is totally unwarranted.

8. It was pointed out by the learned counsel for the 3rd

respondent that in a context when the rider of the motorcycle was established as not holding a valid and effective driving license that recovery of the amount awarded as compensation was permitted after it was deposited in favour of the petitioners and therefore the finding of the Tribunal is liable to be maintained.

9. It is noticed that `4,000/- was fixed as the monthly income on a notional basis. Mr.Sareesh was claimed by the petitioners as 31 years and earning a monthly income of `6,000/- :-7:-

from his occupation as a Carpenter at the relevant time when his life was taken away by the motor accident. Mr.Sareesh being a self employed man, there is every justification to take a higher sum, as monthly income in accordance with the fixation of monthly income by the Apex Court in the case of a Coolie worker

in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd. [(2011) 13 SCC 236]. The accident in question being occurred in the year 2009, this Court finds it reasonable to fix `6,500/- as the monthly income. As compensation towards funeral expenses, the compensation stands awarded being `5,000/-, this Court is inclined to award `11,500/- as additional compensation. Under the head loss of estate, the Tribunal failed to award any sum as compensation and this Court awards `16,500/-.

10. Under the head loss of consortium, each of the

petitioners are entitled to get `44,000/-. As already stated, the award of compensation by the Tribunal is confined to `15,000/- and only in favour of the 1st petitioner. `15,000/- when deducted from `1,76,000/- [(`44,000/-x4)-`15,000/-] `1,61,000/- is :-8:- arrived and the petitioner will get the same as additional compensation.

11. Compensation for loss of dependency when reassessed based on the modified monthly income and multiplier,

`13,10,400/- is arrived at. `5,44,000/- stands awarded by the Tribunal when adjusted against, petitioners will get `7,66,400/- as compensation for loss of dependency. When calculated in the above manner, `9,55,400/- is arrived at.

12. It is noticed from the impugned award that the petitioner have been awarded `20,000/- and `10,000/- respectively towards pain and suffering and loss of love and

affection, which they are disentitled to receive. Therefore, `30,000/- (`20,000/- +`10,000/-) is deducted from the sum now arrived at as additional compensation. Therefore, petitioners will get `9,25,400/- (Rupees Nine lakhs twenty five thousand four hundred only) [`9,55,400/- - `30,000/-] as additional compensation. The said amount will carry interest at the rate of 7.5% per annum from the date of filing of the Original Petition till the date of realisation, excluding 62 days being the delay occurred in filing the appeal. The Tribunal has directed the 3rd :-9:- respondent to deposit the sum arrived at as compensation in

favour of the petitioners and to get it recovered from respondents 1 and 2 jointly and severally on being convinced from evidence that the 2nd respondent was not holding a valid and effective driving license to ride the motorcycle. In the absence of any challenge against it, the direction of the Tribunal is maintained. Thus, the 3rd respondent is directed to deposit the sum now arrived at as additional compensation with interest fixed, within a period of two months from the date on which a certified copy of this judgment is received and to get it recovered from respondents 1 and 2 jointly and severally. The disbursal of the compensation shall be in accordance with the directions issued by this Court in Circular No.03/2019 dated 06.09.2019.

M.A.C.A stands allowed accordingly. Sd/- MARY JOSEPH, JUDGE. ttb

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com