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Dayana vs Mejo

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Court : Kerala

Decided On : Nov-30-2023

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

Appeal No. : MACA/1395/2014

Appellant : Dayana

Respondent : MEJO

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TH THURSDAY, THE 30 DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, MACA NO. 1395 OF 2014 AGAINST THE ORDER/JUDGMENT OPMV 522/2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL , IRINJALAKUDA APPELLANTS/PETITIONERS: 1 DAYANA W/O.LATE MUJEEB REHMAN, KUNNATH HOUSE, PERINJANAM, CHALINGADU, THRISSUR DISTRICT. 2 RUBEENA ROSEMINOR AGED 12 YEARS D/O.LATE MUJEEB REHMAN, -DO- -DO- 3 RUSSAFIDAMINOR AGED 9 YEARS D/O.LATE MUJEEB REHMAN, -DO- -DO- (APPELLANTS 2ND AND 3, MINORS, REPRESENTED BY 1ST APPELLANT MOTHER). BY ADV SRI.P.V.BABY RESPONDENTS/RESPONDENTS:

1 MEJO S/O.JOSE, XI/635, KORIYAN HOUSE, IRINJALAKUDA, THRISSUR DISTRICT - 680 121. 2 N.E.UNNIKRISHNAN GANESH BHAVAN, VADAKKANTHARA, PALAKKAD - 678 012. 3 HDFC CHUBB GENERAL INSURANCE COMPANY LTD. ATHULYA BUILDINGS, CHEENAMBUTHARA, PALAKKAD - 678 001. BY ADVS. SRI.K.B.RAMANAND K.ARJUN VENUGOPAL SRI.RAJESH SIVARAMANKUTTY V.A.HARITHA SIDHARTH B PRASAD OTHER PRESENT: R3- ADV DHANYA BABU, R2 - P.A.MOHAMMED SHAH- THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Appellants are the petitioners in O.P.(MV).No.522 of 2009 on

the file of the Motor Accidents Claims Tribunal, Irinjalakuda. The said claim petition was submitted by them seeking compensation for the death of one Mujeeb Rahman due to injuries sustained to him in a motor accident that occurred on 26.04.2007. The accident occurred when the deceased was travelling in an Omni van bearing registered No.KL-9 R 5570, the said vehicle was hit by a goods carriage bearing registration No.TN-33 F 6858.

2. The respondents 1, 2 and 3 were the registered owner,

insured and insurer of the vehicle in which the deceased was travelling, whereas respondents 4, 5 and 6 were the owner, driver and insurer of the lorry which collided with the said vehicle. According to the appellants, the deceased was a businessman with a monthly income of Rs.5,000/-. He was 32 years old at the time of the accident. The claim petition was submitted in such circumstances.

3. The respondents 1, 3 and 6 filed written statements.

The 3rd respondent and 6th respondent Insurance Companies admitted the coverage of policy in respect of the respective vehicles, but they denied the liability. The negligence as well as the quantum of compensation were also

disputed by them.

4. The evidence in this case consists of oral testimony of

PW1 and Exts.A1 to A11 from the side of the claimants. Ext.B1 and B4 were marked from the side of the respondents. After the trial, the Tribunal came to the conclusion that the accident occurred due to the negligence on the part of the driver of the car in which the deceased was travelling and the respondents 4 to 6 were exonerated from the liability. Quantum of compensation was fixed as Rs.6,21,150/- and the 3rd respondent insurer of the car was directed to deposit the said amount along with interest at the rate of 7.5% per annum from the date of petition till realization with proportionate cost. This appeal is submitted by the appellants seeking enhancement of compensation.

5. Heard Sri.P.V.Baby, learned counsel for the appellants, Sri.Muhammed Shah, learned counsel for the 2nd respondent. and Smt.Dhanya Babu, learned counsel for the 3rd respondent

6. The only dispute in this appeal relates to the quantum

of compensation. The main contest in this case is in respect of the amount awarded by the Tribunal under the head of loss of dependency. It was pointed out that the monthly income taken by the Tribunal for the purpose of assessing the compensation was Rs.3,500/-, which was on the lower side. After examining the materials placed on records, I find some force in the said contention.

7. The specific case of the appellants is that the deceased,

at the relevant time, conducting a business. Of course, it is true that the monthly income claimed was Rs.5,000/- but the learned counsel for the appellants would contend that considering the standards prevailed in the year 2007, higher monthly income ought to have been taken. It is also his case that the fact that the lesser monthly income was shown in the claim petition would not preclude this Court from taking a higher monthly income if the

facts and circumstances warrant it. The said contention has to be

accepted in the facts and circumstances of the case. The accident occurred in the year 2007. When the method of computation evolved from the principles laid down by the Honourable Supreme Court in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236] and Syed Sadiq & Ors. v. Divisional Manager, United India Insurance Company Ltd. [2014 (2) SCC 735] is applied, the monthly income of an ordinary employee without any specialized skills, can be fixed as Rs.4,500/- in respect of an accident that occurred in the year 2004. The usual method that is adopted by this Court to determine the monthly income with respect to the accident that occurred during the subsequent years, is to make an addition of Rs.5,00/- per year. While adopting the said method, in respect of an accident that occurred in the year 2007, the monthly income has to be fixed as Rs.6,000/- which is for an ordinary employee without any skills. In this case, I am of the view that, the said amount can be accepted. As rightly pointed out by the learned counsel for the appellant, the fact that the monthly income mentioned in the claim petition was lesser than the said amount calculated as above, by itself, should not stand in the way of this Court in taking a higher income, for ensuring just compensation. In this regard, it is also to be noted that the legal heirs of the deceased have come with the claim, and the possibility of their lack of awareness of the exact income which the deceased was earning at the relevant time cannot be ruled out. Therefore, the fact that the lesser income was shown in the claim petition need not be given much emphasis. Accordingly, I deem it appropriate to fix the monthly income as Rs.6,000/-.

8. As the deceased was aged 32 years at the time of the

accident, an addition of 40% is to be made towards future prospects. Thus, while reassessing the compensation for loss of dependency with the monthly income as Rs.6,000/- and by applying the other parameters contemplated under National Insurance Company Ltd. v. Pranay Sethi [2017 (4) KLT 662 (SC)], the amount of compensation would come to Rs.10,75,200/- [(6,000 + 40%) x 12 x 16 x 2/3]. The amount already awarded by the Tribunal was Rs.4,48,000/-; thus, the additional amount would come to Rs.6,27,200/-.

9. The learned counsel for the appellants further pointed

out that the amount awarded under the head of loss of estate was Rs.5,000/- which is lesser by 10,000/-. However, it is to be noted that the Tribunal awarded an amount of Rs.25,000/- under the head of Funeral expenses, which was in excess by Rs.10,000/-. Therefore the excess amount is set off against the lesser amount awarded under the head of loss of estate.

10. Similarly, under the head of loss of consortium, the

actual entitlement of the appellants is Rs.1,20,000/- (40,000 x3), whereas the Tribunal has awarded Rs.1,00,000/- under this head. Therefore, a further amount of Rs.20,000/- is to be granted. However, it is evident from the records that the Tribunal has awarded Rs.10,000/- each under the head of loss of expectation of life and loss of love and affection. In the light of the observations

made by the honourable Supreme Court in New India Assurance Company Ltd. v. Somwati & Ors. [(2020) 9 SCC 644] ans United India Insurance Company Ltd. v. Satinder

Kaur @ Satwinder Kaur [(2021) 11 SCC 780] when compensation is awarded for loss of consortium, further amounts under the head of loss of expectation of love and loss of love and affection should not have been granted, as the compensation under loss of consortium would include the said head as well. Therefore, the excess amount granted under those heads can be adjusted against the lesser amount granted under loss of consortium. In short, the total compensation receivable by the appellant is determined as Rs.6,27,200/- (Rupees six lakhs twenty seven thousand and two hundred only) .

In the light of the aforesaid observations and findings, this appeal is allowed. The award dated 17.01.2014 in O.P.(M.V) No.

Irinjalakuda is hereby modified by granting an additional compensation of Rs.6,27,200/- (Rupees six lakh twenty seven thousand and two hundred only) and the 3rd respondent is directed to deposit the said amount along with interest at the rate as ordered by the Tribunal with proportionate cost within a period of three months from the date of receipt of a copy of this judgment.

Sd/- ZIYAD RAHMAN A.A. JUDGE DG/rpk

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