

Omana and Another vs Devision and Others

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Court : Kerala

Decided On : Feb-02-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : MACA/828/2010

Appellant : Omana and Another

Respondent : Devision and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
THURSDAY, THE 2ND DAY OF FEBRUARY 2023 / 13TH MAGHA, 1944
AGAINST THE AWARD DATED 30.06.2009 IN OP(MV)NO.305/2004 ON THE
FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, N.PARAVUR
APPELLANTS/PETITIONERS: 1 OMANA, W/O RAGHAVAN,
PALAKKAPPARAMBIL HOUSE, OLANADU KARA, VARAPPUZHA P.O. 2
KUMARI, D/O.RAGHAVAN, PALAKKAPPARAMBIL HOUSE, OLANADU KARA,
VARAPPUZHA P.O. BY ADVS.SRI.PHILIP T.VARGHESE SMT.ACHU SUBHA
ABRAHAM SMT.SUNANDA SUKUMARAN SRI.THOMAS T.VARGHESE
SRI.P.C.ARJUN RAJA RESPONDENTS/RESPONDENTS:

1 DEVISION, S/O. JAMES, ANJILIKKAL HOUSE, ASOKA ROAD, KALOOR, ERNAKULAM. 2 SASIDHARAN, S/O.KUMARAN, THALAPPILY HOUSE, KOMBATHKAVU P.O., PUTHEN CHIRA VILLAGE, THRISSUR DISTRICT. 3 NATIONAL INSURANCE CO.LTD. BRANCH OFFICE, VI-KA INDUSTRIES ESTATE, CHENNAI, TAMILNADU. BY ADVS.K.A.NOUSHAD SMT.DEEPA GEORGE SRI.M.A.GEORGE AMRIN FATHIMA THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR

ADMISSION ON 02.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

JUDGMENT

The appellants are the wife and daughter of late Raghavan, who was hit by a bus, while he was walking on the National Highway, on 07.03.2003. Raghavan sustained injuries and continued treatment, until he unfortunately died on 05.06.2003.

2. The appellants assert that Raghavan died on account of the injuries sustained in the accident; and therefore, filed OP(MV)No.305/2004 before the Motor Accidents Claims Tribunal, N.Paravur (Tribunal, for short), claiming an amount of Rs.3 lakhs towards compensation. The Tribunal, however, awarded only an amount of Rs.23,000/-, which has now been impugned by them in this Appeal.

3. I have heard Sri.P.C.Arjun Raja -

learned counsel for the appellants; Smt.Deepa George - learned Standing Counsel, appearing for -3- respondent No.3 and Smt.Amrin Fathima - learned counsel, appearing for respondents 1 and 2.

4. I have also examined the evidence and

documents on record, which have been handed over across the Bar by the learned counsel for the parties with specific consent that this Court can act upon it

without dispute.

5. Sri.P.C.Arjun Raja - learned counsel for the appellants, argued that the death of Raghavan was solely on account of the accident, which is indubitable from Ext.A5 - Medical Certificate issued by the Chief Medical Officer, Varappuzha Medical Centre. He pointed out that,

going by the said Certificate, Raghavan developed infection over the area where his skin had to be grafted - consequent to the accident and the fracture resultant thereof - which led to general weakness and finally caused his death. He contended that the evidence of PW2 - -4- the Doctor who treated Raghavan, is unimpeached; and therefore, that the Tribunal ought to have granted compensation as claimed by his clients.

6. Sri.P.C.Arjun Raja alleged that, however, on the contrary, the Tribunal merely

granted Rs.10,000/- towards Compensation f

towards Treatment and Transport Expenses. He argued that denial of compensation for death is untenable and illegal; alternatively, arguing that the amounts awarded by the Tribunal under the various heads are exiguous; while the denial under various others is illegal.

7. Smt.Deepa George - learned Standing

Counsel for the Insurance Company, affirmed that the Tribunal has only awarded the aforesaid amounts in favour of the claimants and added that her client has also been allowed to recover -5- the said amounts from the owner and driver of the offending vehicle, since the latter did not have a valid licence at the time of the

accident. She then submitted that, since no causal connection, between the accident and the death of Raghavan, has been established by the claimants or through the evidence on record, their claim for compensation for his death is untenable and without basis. She submitted that, therefore, the Tribunal has correctly denied compensation for the death of Raghavan; however, granting compensation for injuries, Loss of Amenities and such other.

8. That said, to a pointed question from this Court, Smt. Deepa George conceded that, going by Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236], the notional income ought to have been taken in the case of late Raghavan was -6-

Rs. 4,000/- , since he was injured i

heads Loss of Earning and loss of Amenities would certainly require to be enhanced. She also left to this Court to decide the just compensation for Injuries/Pain and Suffering to Raghavan, since it will have to be reckoned as a case of injury and not death, consequent to the accident; as also towards other heads including Transportation, Damage to Cloth and such other.

9. Smt. Amrin Fathima - learned counsel

appearing for respondents 1 and 2, argued that the findings of the Tribunal, that 1st respondent is responsible for the accident and that the Insurance Company is not liable to indemnify her clients are both incorrect. She, however, -7- conceded that these have not been challenged by them through a separate appeal.

10. When I evaluate and consider the aforesaid submissions, it is without doubt that, in the absence of causal connection between the

accident and the death being proved in any manner, compensation for the unfortunate demise of Raghavan may not be able to be impelled by the appellants. In this regard, I find favour with the conclusions of the Tribunal that, in the absence of a postmortem having been conducted on Raghavan, it would not be possible to establish that he died on account of the injuries sustained by him in the accident, which occurred on 07.03.2003.

11. That said, however, Ext.A5 certificate

issued by the Chief Medical Officer, Varappuzha Medical Centre, and the deposition of PW2 - doctor, render it indubitable that late Raghavan -8- suffered from various grievous injuries and had to be hospitalized for inpatient treatment, as

also for continuous evaluation thereafter.

accident. Though the causal connection between the accident and the death of Raghavan has not been established, the fact that he suffered during the entire period when he was alive after the accident, cannot be contested; and Smt. Deepa George fairly admits that he may have gone through trauma and stress at that time.

12. That being said, Ext.A3 to A5 - medical records, show that Raghavan suffered from comminuted fracture of upper one forth left humerus; multiple abrasions and contusions on the left shoulder (sic) and that he was treated as an inpatient from 07.03.2003 to 21.03.2003.

13. I am, therefore, of the firm view that -9- the compensation awarded by the Tribunal is exiguous and that same requires to be modified, which I propose to do in the following manner: The compensation is re-fixed as under:

(a) For treatment: Rs.10,000/-, going by Ext.A6 series documents.

(b) Damage to Cloth: Rs.500/-

(c) Loss of Amenities: Rs.30,000/-, taking the monthly income of late Raghavan notionally to be Rs.4,000/- per month.

(d) Loss of Earning: Rs.12,000/-, again taking the monthly income of Raghavan as Rs.4,000/- per month.

(e) Compensation for injuries/Pain and Suffering: Rs.40,000/-, reckoning the nature of the injuries and the amount of treatment suffered by him.

(f) Towards Transport Expenses: Rs.1,500/-.

The total compensation is thus fixed as -10- Rs.94,000/-, instead of Rs.23,000/- as has been granted by the Tribunal; and the appellants will be at liberty to recover the same, in the proportion as ordered by the Tribunal, along with interest at the rate of 7% per annum, from the 3rd respondent. Needless to say, the Award of the Tribunal in all other respects is confirmed, including the liberty reserved to the 3rd respondent to pay the compensation and recover it from respondents 1 and 2. It goes without saying that interest for the period of 202 days, being the delay in

filing this Appeal by the appellants and as covered by the order of this Court dated 09.06.2022, will not be eligible to them. Sd/- DEVAN RAMACHANDRAN akv
JUDGE

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