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Smitha Vs. Kunhalikutty

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Court : Kerala

Decided On : Dec-17-2014

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Smitha

Respondent : Kunhalikutty

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA WEDNESDAY, THE17H DAY OF DECEMBER201426TH AGRAHAYANA, 1936 MACA.No. 1862 of 2014 () ---------- AGAINST THE AWARD IN OPMV8072013 of M.A.C.T.,KOZHIKODE DATED2112-2013 APPELLANT(S): ---------- 1. SMITHA, AGED38YEARS, W/O. DINESHAN (LATE), RESIDING AT506VEETUVEDAN KUNNUMMAL HOUSE, P.O.OLAVANNA, KOZHIKODE.

2. SANITHA, AGED18YEARS D/O. LATE DINESHAN, RESIDING AT506VEETUVEDAN KUNNUMMAL HOUSE, P.O.OLAVANNA, KOZHIKODE.

3. SUBHISH (MINOR) S/O. LATE DINESHAN REPRESENTED BY MOTHER AND LEGAL GUARDIAN SMITHA.

4. DAKSHAYANI, AGED63YEARS W/O. LATE DEVARAJAN RESIDING AT PAVITTU MEETHAL HOUSE, KOTTOOLI P.O. KOZHIKODE-673 016. BY ADV.

SRI.M.P.PRAKASH RESPONDENT(S)/RESPONDENTS : ---------- 1. KUNHALIKUTTY S/O. HUSSAIN, HOUSE NO.4/1234, MANIYAMBALAM POOVATTUPARAMBA, KOZHIKODE-673 008.

2. JAMALUDHEEN S/O. MUHAMMED, ELIPARAMBU HOUSE, ANAKUZHIKKARA POOVATTUPARAMBA, KOZHIKODE-673 008.

3. THE ORIENTAL INSURANCE CO. LTD. DO.II, PRAMOD BUILDING, CHEROOTTY ROAD KOZHIKODE-673 001. R3 BY ADV. SRI.R.AJITH KUMAR (128/84) R BY SMT.K.S.SANTHI THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON1712-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

---------- M.A.C.A No.1862 of 2014-B ---------- Dated this the 17th day of December, 2014

JUDGMENT

Ramachandran Nair, J.

The widow, 2 children and the mother of the deceased are the appellants before this Court. The accident occurred on 05.11.2012 at about 1.45 p.m while the deceased Dineshan was travelling as a pillion rider on a motorcycle at Kozhikode-Medical College Road. He was aged 44 years at the time of the accident and was a Carpenter by profession. The learned Tribunal has granted a total compensation of Rs.8 lakhs by considering the loss of dependency at Rs.5,67,000/-. The ground of attack in this appeal is mainly concerning the compensation awarded under the head `loss of dependency', calculated by taking Rs.4,500/- as the monthly income.

2. Before this Court, an application for amendment - I.A.No.3123 of 2014, has been filed for enhancing the total claim to Rs.20 lakhs. The 3rd respondent/Insurance Company has filed a counter affidavit also. Even though strong objection has been raised with regard to the I.A for amendment, having regard to the fact that this Court will have to award just and fair compensation, we

allow the same. M.A.C.A No.1862 of 2014-B23. To support the claim for enhancement, I.A No.3122 of 2014 has been filed and it is pleaded in the application that the deceased was in Gulf countries for a long time from 1998 onwards and his passports for these years have been produced as Annexure-I. The learned counsel for the appellants explained with reference to the relevant entries that the deceased was working as a Carpenter in the United Arab Emirates. Annexure- II is a Certificate dated 27.3.2008 issued by the Administrative Manager of Aluminium & Light Industries Co. (ALICO), UAE, wherein the salary is shown as Dhs.1,330.00, which is equivalent to Rs.19,500/-. Annexure-III is the Notification issued as G.O (Ms) No.24/2011/LBR dated 18.02.2011 under the Minimum Wages Act, 1948. It is stated that the State Government had fixed a minimum daily wages for a skilled Carpenter at Rs.350/- plus Dearness Allowance which will come to Rs.450/- in the year 2011 and accordingly the wages calculated for 26 days would come to Rs.11,700/-.

4. The learned counsel for the Insurance Company submitted that even going by the passport, his visa had expired on 08.02.2012 and therefore it can be presumed that he had M.A.C.A No.1862 of 2014-B3come back to India by that time and the accident occurred in November, 2012 and therefore this Court cannot accept that he was earning by working overseas. It is also submitted that those details were not produced before the Tribunal and therefore the respondent had no occasion to challenge the same.

5. We are also of the view that since the deceased was in India during the period of accident it can be reasonably presumed that he would have come back by February, 2012. We will not be justified in adopting the income shown in Annexure-II for fixing fair compensation.

6. But we will have to consider various aspects for fixing the compensation since he was a skilled worker. According to the learned counsel for the appellants Sri Prakash, at least the fact that he was in a foreign country will show that he was a skilled worker and therefore even if he was in India, this Court can fix a reasonable amount in the light of the notification Annexure-III issued under the Minimum Wages Act or by considering the situation in the State in respect of employees

coming under the said category, who are earning handsome amount by getting regular employment. M.A.C.A No.1862 of 2014-B47. Sri Prakash claims wages of the deceased @ Rs.400/- per day which is stoutly opposed by the learned counsel for the Insurance Company Sri Ajith Kumar by stating that if such a figure is adopted, it will be exorbitant and it is unsupported by any other documentary evidence also.

8. Having regard to the various aspects and in the light of the fact that he was a skilled worker, namely, a Carpenter, we will be justified by fixing Rs.9,000/- as his monthly income and while fixing compensation, one fourth will have to be deducted for personal expenses, and therefore the dependency factor will be Rs.11,34,000/- (Rs.9,000/- X12X14X >).

9. The Tribunal has fixed the compensation in the following manner:- Sl.No. Head of claim Amount awarded by the Tribunal 1 Transport to hospital Rs. 1,000.00 2 Damage to clothings and other articles Rs. 1,000.00 3 Funeral expenses Rs. 25,000.00 4 Loss of estate Rs. 6,000.00 5 Loss of love and affection Rs. 1,00,000.00 6 Loss of consortium Rs. 1,00,000.00 7 Loss of dependency Rs. 5,67,000.00 Total Rs. 8,00,000.00 M.A.C.A No.1862 of 2014-B510. According to the learned counsel for the respondent, all the other heads of claims have been properly assessed. We find from the award of the Tribunal that towards loss of love and affection, Rs.1 lakh is granted by fixing Rs.25,000/- each to all the claimants. According to us, out of 4 claimants, 2 are minor children, we will be justified in granting Rs.1 lakh more towards love and affection. Accordingly we modify the award in the following manner: Sl. Head of claim Amount awarded Modified No. by the Tribunal award amount 1 Transport to hospital Rs. 1,000.00 Rs. 1,000.00 2 Damage to clothings and other articles Rs. 1,000.00 Rs. 1,000.00 3 Funeral expenses Rs. 25,000.00 Rs. 25,000.00 4 Loss of estate Rs. 6,000.00 Rs. 6,000.00 5 Loss of love and affection Rs. 1,00,000.00 Rs. 2,00,000.00 6 Loss of consortium Rs. 1,00,000.00 Rs. 1,00,000.00 Loss of dependency Rs. 5,67,000.00 Rs.11,34,000.0 7 0 Total Rs. 8,00,000.00 Rs.14,67,000.00 (Rupees Fourteen lakhs and sixty seven thousand only) The appellants will be entitled to a total compensation of Rs.14,67,000/- (Rupees Fourteen lakhs sixty seven thousand only), which will carry interest @ 9% per annum from the date of petition. The

compensation will be apportioned between the M.A.C.A No.1862 of 2014-B6claimants in the ratio stipulated by the Tribunal. The appellants will remit the court fee in tune with the total amount of compensation granted by this Court before receiving the amount from the Tribunal and the Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount if any already deposited before the Tribunal. The appeal is allowed accordingly. No costs. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S to Judge

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