

Kunjamma Pathrose Vs. Shibu K.D

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Court : Kerala

Decided On : Dec-20-2014

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

Appellant : Kunjamma Pathrose

Respondent : Shibu K.D

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 SATURDAY, THE 20TH DAY OF DECEMBER 2014 29TH AGRAHAYANA, 1936 MACA.No. 1192 of 2014 ()
----- AGAINST THE AWARD IN OPMV1972010 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, MUVATTUPUZHA DATED 17.10.2013 APPELLANTS/PETITIONERS : ----- 1. KUNJAMMA PATHROSE W/O. LATE PATHROSE, PLAMOOTTIL HOUSE, KARINGAZHAKARA KOTHAMANGALAM.

2. MINI P.P. D/O. LATE PATHROSE, PLAMOOTTIL HOUSE, KARINGAZHAKARA KOTHAMANGALAM. (NOW RESIDING AT THARAMATTATHIL HOUSE MALIPPARA POST, PAZHANGARA).

3. SINI P.P. D/O. LATE PATHROSE, PLAMOOTTIL HOUSE, KARINGAZHAKARA KOTHAMANGALAM, (NOW RESIDING AT

POTHANIKKATTU HOUSE AYAKKADU KARA, KOTHAMANGALAM).

4. SIJI P.P. D/O. LATE PATHROSE, PLAMOOTTIL HOUSE, KARINGAZHAKARA KOTHAMANGALAM. (NOW RESIDING AT KUNNUMPURATHU KUDY HOUSE AYAKKADU KARA, KOTHAMANGALAM).

5. ALIAS P.P. S/O. LATE PATHROSE, PLAMOOTTIL HOUSE, KARINGAZHAKARA KOTHAMANGALAM. BY ADVS.SRI.S.SUBHASH CHAND SRI.SHINDO VARGHESE RESPONDENTS/RESPONDENTS :

----- 1. SHIBU K.D S/O. DEVASSIKUTTY, KARUTTYKUNNEL HOUSE KUTTIANCHAL KARA, KUTTAMPUZHA, PIN-686 681.

2. SAJEEV S/O. NARAYANAN, HOUSE NO.604, WARD NO.4 MATINAYIL HOUSE, PLAPARA P.O., KOTHAMANGALAM-686 691.

3. THE NEW INDIA ASSURANCE CO. LTD. MADAPARAMBIL CHAMBERS, MUVATTUPUZHA-686 661. R3 BY ADV. SMT.RAJI T.BHASKAR R BY SRI.A.A.ZIYAD RAHMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 2012-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: AL/- T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ., ----- M.A.C.A. No.1192 of 2014 -----
----- Dated this the 20th day of December 2014

JUDGMENT

Ramachandran Nair , J., The appellants are the claimants before the Tribunal. The appellant No.1 is a widow of late Sri.Pathrose and the appellants 2 to 5 are the children of him. The accident occurred on 25.3.2009 at 9.50 a.m while the deceased was driving a motor cycle bearing Registration No. KL-17/C7558 through Kothamangalam-Punnekkad public road. The offending vehicle is a private bus bearing registration No. KL-17/A510 The case of the appellant was that while overtaking the motor cycle it hit the motor cycle and the deceased fell down and he sustained fatal injuries to his head and chest. He was immediately taken to the Hospital and succumbed to injuries in the hospital.

2. It was stated that he was doing milk vending and was engaged in agricultural activities and an earnings of Rs.7,000/- per month was claimed. A total amount of Rs. 5,40,000 was M.A.C.A. No.1192 of 2014 :2: claimed as compensation and the Tribunal below granted Rs. 2,06,000/-.The appeal is filed for the quantum only 3. We heard learned counsel on both sides.

4. According to the learned counsel for the appellant, he was a milk vendor and doing agricultural activities and therefore the notion income fixed at Rs. 2000/- is too low. It is also submitted that the compensation granted for other heads like funeral expenses (Rs.5,000), loss of estate (Rs. 5000/-), loss of consortium (Rs.25,000/-) is also not adequate.

5. Learned counsel for the Insurance Company submitted that the deceased was aged 66 at the time of the accident and therefore, he may not be stated to be an earning member of the family unless concrete contrary evidence is there.

6. The Tribunal was of the view that only the mother of the appellants 1 to 4 alone can be the dependant since the daughters have been married away and son is aged 29. Accordingly, compensation has been fixed and we do not find any reason to disagree with the same. But still the children will also be entitled for compensation for other heads other than dependency compensation. Therefore, we will have to consider M.A.C.A. No.1192 of 2014 :3: whether as far as the compensation for dependency granted to appellant No.1 is justified or not.

7. The Tribunal has assessed the notional income at Rs. 3000/-. We are of the view that even though the deceased was aged 66 years, he was very active and while he was riding the motor cycle the accident occurred. Of course, definite evidence is not there as regards the occupation claimed viz., milk vendor and agricultural labourer. But still as far as the service to the family is concerned there cannot be any dispute. In that view of the matter, a reasonable amount can be fixed for the purpose of ascertaining compensation. Even though, the Tribunal has fixed at Rs. 3,000/- as notional income, we are of the view that to fix just and fair compensation, the income can be fixed as Rs. 4,000/- per month. As compensation for funeral expenses in the light of the various decisions of the Supreme Court Rs. 25,000/- can be granted. For loss of estate, Rs. 5,000/- has

been granted and we enhanced the same to Rs. 15,000/-. Learned counsel for the appellants submitted for loss of consortium Rs. 1 lakh could have been granted by the Tribunal. The appellant No.2 was aged 55 at the time of the accident. The deceased was also aged 66. M.A.C.A. No.1192 of 2014 :4: Towards loss of consortium and funeral expenses, going by the decision of the Apex Court reported in Rajesh v. Rajbir Singh (2013 (3) KLT89(SC) it has been held that `1,00,000/- and `25,000/- respectively, can be awarded. We will fix the amount towards loss of consortium to Rs. 40,000/- considering the age of the deceased as well as that of the widow. Therefore, we refix the compensation as follows:

Sl	Head	Amount	No. awarded	modified Compensation
1	loss of 1,20,000	1	dependency	160000
2	Pain and sufferings	10000	10000	10000
3	Funeral expenses	5000	25000	25000
4	Loss of estate	5000	15000	15000
5	Transportation expenses	1000	2500	2500
6	Loss of consortium	250000	40000	40000
7	Loss of love and affection	40000	40000	40000
Total		2,06,000	292500	(Rupees Two lakh Ninety Two Thousand Five hundred only).

8. The interest awarded by the Tribunal at the rate of 8% p.a. is too low and we fix the interest at the rate of 9% p.a from the date of petition in the light of the decision of the apex court reported in Supe Dei(Smt.) & Ors. v. National Insurance Co. M.A.C.A. No.1192 of 2014 :5: Ltd. and Anr. [(2009)4 SCC513. The Insurance Company is directed to deposit the entire amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. The appeal is allowed as above. Sd/- T.R.RAMACHANDRAN NAIR (JUDGE) Sd/- P.V.ASHA (JUDGE) AL/- True copy P.A to Judge

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