

Mini Vs. Sabu T.J.

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Court : Kerala

Decided On : Dec-09-2014

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appellant : Mini

Respondent : Sabu T.J.

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 TUESDAY, THE 9TH DAY OF DECEMBER 2014 18TH AGRAHAYANA, 1936 MACA.No. 2727 of 2014 () ----- AGAINST THE AWARD IN OPMV4402013 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THODUPUZHA DATED 21.7.2014 APPELLANTS/PETITIONERS: ----- 1. MINI AGED 35 YEARS W/O.LATE SHAJI, KARAYIKADAM HOUSE, CHINNAR P.O. ELAPPARA, IDUKKI DISTRICT.

2. RAJESH AGED 18 YEARS S/O.LATE SHAJI, KARAYIKADAM HOUSE, CHINNAR P.O. ELAPPARA, IDUKKI DISTRICT.

3. YADHUKRISHNAN AGED 6 YEARS S/O.LATE SHAJI, MINOR REPRESENTED BY HIS NEXT FRIEND AND GUARDIAN, MINI W/O.LATE SHAJI, KARAYIKADAM HOUSE, CHINNAR P.O. ELAPPARA, IDUKKI DISTRICT.

4. RAHUL KRISHNA AGED 2 YEARS S/O. LATE SHAJI, MINOR REPRESENTED BY ITS NEXT FRIEND AND GUARDIAN, MINI W/O. LATE SHAJI, KARAYIKADAM HOUSE, CHINNOR P.O. ELAPPARAM IDUKKI DISTRICT. BY ADV. SMT. BINITHA JAMES RESPONDENTS/RESPONDENTS:

----- 1. SABU T.J.

S/O. JANAKUMAR, THANNIKKULAM HOUSE, CHAKKAKKANAM BHAGAM UPPUKANDAM KARA, KALKOONTHAL VILLAGE IDUKKI DISTRICT - 685 514.

2. JOJI K. SEBASTIAN KUNNUMPURATH HOUSE, PONKUNNAM P.O. KOTTAYAM DISTRICT - 686 506.

3. M/S. NATIONAL INSURANCE CO. LTD., REPRESENTED BY ITS BRANCH MANAGER KANIRAPPALLY - 686 507, KOTTAYAM DISTRICT. R3 BY ADV. SRI. RAJAN P. KALIYATH R BY SRI. M. A. GEORGE THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 09/12/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: AL/- T. R. RAMACHANDRAN NAIR & P. V. ASHA, JJ., -----
- - - M.A.C.A.No.2727 of 2014 - - - - - Dated this the 9th day of December 2014

JUDGMENT

Ramachandran Nair, J., The wife and children of the deceased late Sri. Shaji are the appellants before this Court, aggrieved by the inadequate compensation awarded by the Tribunal. There are four appellants. Appellants 2, 3 & 4 are the children. He was involved in the accident on 14.7.2013 at 7.40 a.m while he was riding his motor cycle bearing registration No. KL-37/4385 along the Elappara-Chinnar road. The offending vehicle is a jeep bearing registration No. KL6/2034 driven by the first respondent before the Tribunal. In the collision, the deceased sustained serious injuries and he was taken to St. John's Hospital, Kattappana and from there, was referred to Medical College Hospital, Kottayam. He succumbed to injuries on the same day.

2. We are only concerned with the grievance M.A.C.A.No.2727 of 2014 :2: regarding the assessment of monthly income of the deceased, the amount

awarded towards loss of consortium, loss of love and affection to the children and for pain and suffering. The age of the deceased was 40, according to the award passed by the Tribunal. He was a mason and it was claimed that he was getting a monthly income of Rs. 7,500/-. The appellants have produced, the reply given under the Right to Information Act by the Assistant Labour Officer with regard to the minimum wages given to a building construction labourer, where it was shown as Rs. 380/-, as Ext.A8. It was issued to a lawyer. The Tribunal did not accept it on the ground that concerned notification has not been produced or the Labour officer has not been examined. Ext.A8 was marked the objection.

3. Considering the fact that he was a mason and after considering the cost of living and hike in prices, the monthly income was fixed as Rs. 6,000/- and for the future increase in wages also 50% was granted and finally, it was assessed as Rs.9,000/-. 4.The Tribunal has awarded compensation in the following manner : M.A.C.A.No.2727 of 2014 :3: Sl. Head of claim Amount Basis No 1 Loss of dependency 12,15,000/- 9000x12-1/4x15 2 Transportation 5000 Bills not expense produced. 3 Funeral expenses 25000 4 Damage to clothing 1000 5 Pain and suffering 15,000/- 6 Loss of consortium 70000 7 Loss of love and affection 150000 50000x3 8 Loss of estate 10000 Total 14, 91,000/- 5. Learned counsel for the Insurance Company submitted that since the deceased was only aged 40, only 30% alone could have been the future increase towards wages. We have considered the rival submissions. The accident occurred in the year 2013 and going by the situation in this State being a skilled labourer he would have obtained substantial monthly income. Of course, documentary evidence could not be produced and it may not be available also. But we are of the view that, the Tribunal has assessed it as Rs. 9,000/-, of course, by adding 50% to the monthly income, it arrived at Rs. 6,000/-. Even if, the said method, according to the learned counsel for the M.A.C.A.No.2727 of 2014 :4: respondent may not be a correct one, according to us, for fair assessment of the situation, it would be clear that even if he was getting 20 days average work per month, the income returned will only be Rs. 450/- per day, which cannot be said to be on a higher side in the light of the situation in this State as on the date of the accident. He was a skilled worker viz., a mason which is also relevant. Therefore, we confirm the same. 6.The Tribunal has assessed loss of dependency at Rs. 12,15,000/- after deducting

7. We refix the compensation in the following manner. Sl.No Head of claim Amount Basis 1 Loss of dependency 12,15,000/- 9000x12-1/4x15 2 Transportation 5000 Bills not produced. expense 3 Funeral expenses 25000 4 Damage to clothing 1000 5 Pain and suffering 15,000/- 6 Loss of consortium 100000 7 Loss of love and 300000 100000x3 affection 8 Loss of estate 10000 Total 16, 71,000/- Therefore, the total compensation will be Rs.16,71,000/- (Rupees Sixteen lakh Seventy one thousand only).

8. Even though, learned counsel for the appellant submitted that the cost awarded by the Tribunal is too low. It is a matter of discretion, and we are not interfering with it. M.A.C.A.No.2727 of 2014 :6:

9. Instead of the interest granted at 8.5% p.a., we fix the interest at the rate of 9% p.a from the date of petition by relying upon the decision of the apex court reported in *Supre Debi(Smt.) & Ors. v. National Insurance Co. 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.

10. The amount will be disbursed in the same proportion fixed by the Tribunal. The appeal is allowed as above. No cost. Sd/- T.R.RAMACHANDRAN NAIR (JUDGE) Sd/- P.V.ASHA (JUDGE) AL/- True copy P.A to Judge M.A.C.A.No.2727 of 2014 :7: draft ready

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