

Sainaba vs the General Manager

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Court : Kerala

Decided On : Jan-31-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : MACA/491/2012

Appellant : Sainaba

Respondent : The General Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 31ST DAY OF JANUARY 2022 / 11TH MAGHA, 1943 MACA NO. 491 OF 2012 AGAINST THE AWARD DATED 18.12.2008 IN OP(MV)NO.1382/2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOZHIKODE APPELLANTS/PETITIONERS:

1 SAINABA W/O.SUBAIR (DECEASED), KALLIDUKKIL HOUSE, KODUVALLY POST, KOZHIKODE-673 001. 2 RISHAD MINOR AGED 15 YEARS, S/O.SUBAIR (DECEASED), REP.BY MOTHER SAINABA, KALLIDUKKIL HOUSE, KODUVALLY POST, KOZHIKODE-673 001. 3 RAMSHEED MINOR AGED 12 YEARS, S/O.SUBAI (DECEASED),

REP.BY MOTHER SAINABA, KALLIDUKKIL HOUSE, KODUVALLY POST, KOZHIKODE-673 001. 4 JAMSHAD MINOR AGED 10 YEARS, S/O.SUBAIR (DECEASED), REP.BY MOTHER SAINABA, KALLIDUKKIL HOUSE, KODUVALLY POST, KOZHIKODE-673 001. 5 HARSHAD MINOR AGED 7 YEARS, S/O.SUBAIR (DECEASED), REP.BY MOTHER SAINABA, KALLIDUKKIL HOUSE, KODUVALLY POST, KOZHIKODE-673 001. 6 ABOOBACKER KUTTY F/O.SUBAIR (DECEASED), KALLIDUKKIL HOUSE, KODUVALLY POST, KOZHIKODE-673 001. 7 AYISHA M/O.SUBAIR (DECEASED), KALLIDUKKIL HOUSE, KODUVALLY POST, KOZHIKODE-673 001. - :2:-

BY ADV SRI.NIRMAL. S RESPONDENTS/RESPONDENTS: 1 THE GENERAL MANAGER K.S.R.T.C., TRIVANDRUM-695 001. 2 P.ABOOBACKER S/O.MOHAMMED, UDAYOUTH PURAYIL, KIZHAKOTH POST, KODUVALLY, KOZHIKODE-673 001. THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:- Dated this the 31st day of January,2022

JUDGMENT

The appellants were the petitioners in O.P (MV) No.1382/2005 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode. The respondents in the appeal were the respondents before the Tribunal.

2. The appellants had filed the claim petition

under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the death of Subair(deceased) - the husband of the first appellant, the father of the appellants 2 to 5 and the son of the appellants 6 and 7. It was their case that, on 30.09.2004, while the deceased was waiting at the KSRTC Bus Depot at Sulthan Bathery, a bus bearing registration No. KL-15-4907, driven by the second respondent in a rash and negligent manner, hit the deceased. The deceased lost his life instantaneously. The deceased was a copra trader and earning a daily

-:4:- income of Rs.250/-. The bus was owned by the first respondent. The appellants were the dependants of the deceased. Hence, they claimed a compensation of Rs.11,39,000/- from the respondents, which claim was limited to Rs.4,00,000/-

3. The first respondent had filed a written statement admitting the ownership of the bus. However, the first respondent denied the other pleadings in the claim petition.

4. The appellants produced and marked Exts.A1 to A3 in evidence. The respondents did not let in any evidence.

5. The Tribunal, after analysing the pleadings

and materials on record, allowed the claim petition in part, by permitting the appellants to recover from the first respondent an amount of Rs.3,19,000/- with interest and cost.

6. Dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioners -:5:- are in appeal.

7. Heard; Smt. Veena Hari, the learned counsel appearing for the appellants/petitioners and Sri. Alex Antony, the learned counsel appearing for the first respondent /owner.

8. The sole point that arises for consideration in this appeal is whether the quantum of compensation awarded by the Tribunal is reasonable and just. Negligence and liability

9. Ext.A1 First Information Report(FIR) registered by the Sulthan Batheri police in Crime No.439/2004 proves that the accident occurred due to

the negligence of the second respondent. The respondents have not let in any evidence to discredit Ext.A1 FIR or controvert the pleadings in the claim petition. Therefore, it is only to be accepted that the accident occurred due to the negligence of the second respondent. Admittedly, the first respondent was the owner of the bus. Therefore, the first respondent is

-:6:- vicariously liable to pay the compensation amount to the appellants/petitioners. Income of the deceased

10. The appellants had claimed that the deceased was a copra trader and earning a daily income of Rs.250/-. The Tribunal, for the want materials, fixed the notional monthly income of the deceased at Rs.2,500/-.

11. In Ramachandrappa v. Manager, Royal

Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236], the Honourable Supreme Court has fixed the notional income of a coolie worker in the year 2004 at Rs. 4500/- per month.

12. Following the yardstick in the afore-cited decision and considering the fact that the accident occurred in the year 2004, I fix the notional monthly income of the deceased at Rs.4,500/-. Multiplier

13. Even though the appellants had stated that -:7:-

the deceased was aged 39 years, it is found as per Ext.A2 postmortem certificate that the deceased was aged 41 years. Therefore, I uphold the findings of the Tribunal that the deceased was 41 years and re-fix the multiplier at 14, following the principles in Sarla Verma v Delhi Transport Corporation [2010(2) KLT 802 (SC)].

Personal living expenses of the deceased

14. It is proved as per Ext.A3 Family Membership

Certificate that the appellants were the wife, children and parents of the deceased. They are seven in number. However, as the appellants 6 and 7 were leading independent lives, I hold that only appellants 1 to 5, the wife and children of the deceased were his dependants. Therefore, I deduct th of the compensation towards the personal living expenses of the deceased. Future prospects

15. In the light of the decision in Sarla Verma -:8:-

(supra) and National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680], and considering the fact that the deceased was aged 41 years at the time of his death, I hold that the appellants are entitled to 25% future prospects. Loss due to dependency

16. Taking into account the above-mentioned

factors, namely; the notional monthly income of the deceased at Rs.4,500/-, the multiplier at 14, future prospects at 25% and after deducting one-fourth of the compensation towards personal living expense of the deceased, I award the appellants an amount of Rs.7,08,750/- towards 'loss of dependency', instead of Rs.3,00,000/- awarded by the Tribunal. Conventional/Traditional heads of compensation

17. In paragraph 59.8 of Pranay Sethi (supra) it is held that the dependents of the deceased are entitled for compensation under the conventional heads viz., funeral expenses, loss of estate and loss of consortium at Rs.15,000/-, Rs.15,000/- and Rs.40,000/- per dependent, respectively. It is further

held that the above amounts have to be enhanced

by 10% every three years.

18. In N.Jayasree vs. Cholamandalam M.S, General Insurance Co Ltd. [2021 SCC Online SC

967] and Rasmita Biswal and others vs. The Divisional Manager, National Insurance Co., Ltd and another [2021 SCC Online SC 1193], the Hon'ble Supreme Court, for the accidents that happened in the years 2011 and 2013, respectively, has granted 10% escalation on the conventional heads, irrespective of the dates of the accident. Thus, it is to be construed and inferred that the 10 % escalation is to be granted every three years from the date of pronouncement of the judgment in Pranay Sethi (supra), which was rendered on 31.10.2017, and not for accidents that

occur every three years after 31.10.2017. Thus, the dependents of the deceased are, after 31.10.2020, -:10:- entitled to amounts of Rs.16,500/- each under the heads 'funeral expenses' and 'loss of estate', and Rs.44,000/- under the head 'loss of consortium'.

19. In the instant case, the Tribunal has awarded

an amount of Rs.2,500/- towards funeral expenses and Rs.10,000/- towards loss of consortium. The Tribunal has not awarded any amount under the head loss of estate. Accordingly, I award the appellants a further amount of Rs.14,000/- under the head funeral expenses, Rs.16,500/- under the head loss of estate and a further amount of Rs.2,10,000/- i.e., Rs.44,000/- each for the appellants 1 to 5 as loss of consortium.

Pain and sufferings:

20. The Tribunal has awarded an amount of Rs.5,000/- as compensation under the head pain and sufferings.

21. In paragraph 19 of Sarla Varma (supra), the Honourable Supreme Court has held that no amount shall be awarded to the dependents of the deceased -:11:- under the head 'pain and sufferings' in the case of

instantaneous death. The said view has been reiterated in United India Insurance Co. Ltd v. Satinder Kaur @ Satwinder Kaur and others- [(2020) SCC Online 410]. Hence, I set aside the amount of Rs.5,000/- awarded under the head 'pain and sufferings'. Other heads of compensation

22. With respect to the compensation awarded under the head transportation expenses, I find the same to be reasonable and just compensation.

23. On a comprehensive re-appreciation of the pleadings, materials on record and the law referred to

in the afore-cited precedents, I hold

re-calculated above, and given in the table below for easy reference. -:

Sl.No	Head of claim	Amount	Amounts awarded by the modified and Tribunal (in recalculated rupees)
1	Transport expenses	1,500	1,500
2	Funeral expenses	2,500	16,500
3	Pain and sufferings	5,000	Nil
4	Loss of estate	Nil	16,500
5	Loss of consortium	10,000	2,20,000
5	Loss of 3,00,000 dependency	7,08,750	
	TOTAL	3,19,000	9,63,250

25. Albeit the appellants claiming an amount of

Rs.4,00,000/- as compensation, following the ratio decidendi in Sarla Verma and Pranay Sethi (supra), I have awarded the appellants future prospects as well as compensation under the conventional heads. Therefore, I award them more compensation than what is claimed in the claim petition. The said course is admissible in the light of the law laid down in

Nagappa vs. Gurudayal Singh [2003 (1) KLT 115(SC)] and Rajesh vs. Rajbir Singh [2013 (3) KLT -:
13:- 89 (SC)]. In the result, the appeal is allowed, by enhancing the compensation by a further amount of

Rs.6,44,250/- with interest at the rate of 7% per annum from the date of petition till the date of deposit and proportionate cost. The first respondent is ordered to deposit the enhanced compensation with interest and proportionate cost before the Tribunal within sixty days from the date of receipt of a certified copy of the judgment. Immediately on the compensation amount being deposited, the Tribunal shall disburse the deposited amount to the appellants in the ratio of 20:20:20:20:20 after deducting their liability, if any, towards court fee, and in accordance with law.

Sd/- C.S.DIAS,JUDGE DST/31.01.22 //True copy/ P.A.To Judge

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