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Mani vs Suresh Babu

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Court : Kerala

Decided On : Jan-31-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : MACA/2774/2012

Appellant : MANI

Respondent : Suresh Babu

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. 2774 OF 2012 AGAINST THE AWARD DATED 06.02.2012 IN OPMV 724/2009 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOLLAM APPELLANTS/PETITIONERS:

1 MANI AGED 48 YEARS S/O.RAJU, PUTHUVEL PUTHEN VEEDU, ELAMPALLOOR, MULAVANA, KUNDARA. 2 SHOBA AGED 38 YEARS W/O.MANI, PUTHUVEL PUTHEN VEEDU, ELAMPALLOOR, MULAVANA, KUNDARA. 3 AJITH AGED 20 YEARS S/O.MANI, PUTHUVEL PUTHEN VEEDU, ELAMPALLOOR, MULAVANA, KUNDARA. 4 SHOBESH AGED 18 YEARS S/O.MANI, PUTHUVEL

PUTHEN VEEDU, ELAMPALLOOR, MULAVANA, KUNDARA. BY ADV SMT.M.MEENA JOHN

RESPONDENTS/RESPONDENTS: 1 SURESH BABU NALLIVILA VEEDU, VELLIYAM PADINJATTINKARA, VELIYAM P.O., PIN 691504. 2 BABICHAN VATTAVILA VEEDU, KARIKUZHI, PADAPPAKARA P.O., PIN 691503. 3 NEW INDIA ASSURANCE CO.LTD. KOLLAM-691001. BY ADV P.MURALEEDHARAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

The appellants were the petitioners in O.P (MV) No.724/2009 on the file of the Motor Accidents Claims Tribunal,Kollam. 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 Murukan(deceased)- the son of appellants 1 and 2 and

the brother of appellants 3 and 4. It was their case that, on 23.03.2009, while the deceased was working at Sangham Service Station, Kundra, Kollam, a lorry bearing registration No. KL 2/H 8573, which was taken for service, due to the negligence of the second respondent, hit the deceased. The deceased suffered multiple injuries and was treated at the Medical

-:3:- College Hospital, Thiruvananthapuram, for a period of 82 days. Unfortunately, the deceased succumbed to the injuries on 13.06.2009. The Kundra police had registered Crime No.281/2009 against the second respondent for the offences punishable under Sections 279 and 304 of the Indian Penal Code. The first respondent was the owner and the third respondent was the insurer of the lorry. The deceased was a mechanic by profession and employed at the service station. He was drawing a monthly salary of Rs.7500/-. The appellants were the dependents of the deceased. Hence, they claimed a compensation of

Rs.7,00,000/- from the respondents.

3. The respondents 1 and 2 did not contest the proceeding and were set ex- parte.

4. The third respondent had filed a written

statement, admitting that the lorry had a valid insurance coverage. The third respondent denied negligence on the part of the second respondent. The -:4:- third respondent also disputed the age, income and occupation of the deceased. It was also contended that the compensation claimed was excessive.

5. The appellants had examined PW1, who proved Exhibits A1 to A10 series. The respondents did not let in any evidence.

6. The Tribunal, after analysing the pleadings and

materials on record, allowed the claim petition in part, by permitting the appellants to recover from the third respondent an amount of Rs.5,72,000/- with interest and proportionate cost.

7. Dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioners are in appeal.

8. Heard; Smt. Meena John M., the learned counsel appearing for the appellants/petitioners and Sri.P.Muraleedharan, the learned counsel appearing for the third respondent/insurer.

9. The point that arises for consideration in this -:5:- appeal is whether the quantum of compensation awarded by the Tribunal is reasonable and just?

10. Exhibit A4 charge sheet filed by the Kundra

Police in Crime No.281/2009 proves that the accident was caused due to the negligence of the second respondent. Indisputably, the first respondent was the owner and the third respondent was the insurer of the lorry. The respondents have not let in any evidence to

discredit Exhibit A4 charge sheet.

indemnify the liability of the first respondent arising out of the accident. Income

11. The appellants had claimed that the deceased was a Mechanic by profession and working at Sangham Service Station. To prove the said pleading, they had produced Exhibit A9 salary -:6:-

certificate, wherein it is certified that the deceased was paid a monthly salary of Rs.7500/- . However, the appellants did not examine the author of the said certificate. Therefore, the Tribunal declined to accept Exhibit A9 on its face value and fixed the monthly income of the deceased on notional basis at Rs.6000/-.

12. 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.

13. Following the principles laid down in the afore-cited decision and considering the fact that the accident occurred in the year 2009, I re-fix the notional monthly income of the deceased at Rs.7000/-. Multiplier

14. It is proved and established that the deceased was 19 years at the time of the accident. In view of -:7:-

the law laid down in Sarla Verma and Others v. Delhi Transport Corporation and another[(2009) 6 SCC 121], the relevant multiplier to be adopted is 18 , instead of 14 adopted by the Tribunal. Personal living expenses of the deceased

15. Admittedly, the deceased was a bachelor. In

view of the law laid down in Sarla Verma and National Insurance Company Limited v. Pranay Sethi and others [(2017) 16 SCC 680Pranay Sethi (supra), one - half of the compensation has to be deducted towards the personal living expenses of the deceased. Future prospects

16. In the light of the law laid down in Sarla

Verma and Pranay Sethi (supra), and considering the fact that the deceased was aged 19 years at the time of his death, the appellants are entitled to future prospects @ 40%. -:8:- Loss of dependency

17. Taking into account the above mentioned

factors, namely, the monthly income of deceased at Rs.7,000/-, the multiplier at '18', future prospects @ 40% and after deducting one- half of the compensation towards the personal living expenses of the deceased, I re-fix the compensation for loss of dependency at Rs.10,58,400/-, instead of Rs.5,04,000/- awarded by the Tribunal. Conventional/Traditional heads of compensation

18. 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. -:9:-

19. 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, entitled to amounts of Rs.16,500/- each under the heads 'funeral expenses' and 'loss of estate', and Rs.44,000/- under the head -:10:- 'loss of consortium'.

20. In the instant case, the Tribunal has awarded

an amount of Rs.10,000/- under the head funeral expenses, and has failed to award any amount under heads loss of consortium and loss of estate. Therefore, I award the appellants a further amount of Rs.6,500/- under the head funeral expenses an amount of Rs.16,500/- under the head loss of estate and an amount of Rs.88,000/- to the appellants 1 and 2 under the head loss of consortium. Loss of love and affection

21. The Tribunal has awarded an amount of

Rs.10,000/- under the head 'loss of love and affection'. In New India Assurance Co. v. Somwati and others [(2020) 9 SCC 644] the Honourable Supreme Court has held that once compensation is awarded under the head 'loss of consortium', no amount shall be awarded under the head 'loss of love and affection', as it would -:11:- amount to duplication of compensation. Therefore, I set aside the amount of Rs.10,000/- awarded under the head 'loss of love and affection'. Pain and sufferings and by-stander expenses

22. The Tribunal has awarded an amount of Rs.25,000/- under the head pain and sufferings and has failed to award any amount under the head by- stander expenses.

23. It is established by Exhibit A4 charge sheet

and Exhibit A5 postmortem certificate that even though the accident occurred on 23.03.2009, the deceased passed away only on 13.06.2009 i.e. 82 days after the accident. The deceased was under continuous treatment at the Medical college Hospital, Thiruvananthapuram. All through out the said period, he needed the assistance of a by-stander. In the above circumstances, I award the appellants an amount of Rs.18,000/- towards by-stander expenses and also confirm the amount of Rs.25,000/- awarded under the -:12:- head pain and sufferings.

24. With respect to the compensation awarded under the heads medical and transportation expenses, I find the same to be reasonable and just compensation. On a comprehensive re-appreciation of the pleadings, materials on record and the

law referred to

in the afore-cited decisions, I hold that the appellants/petitioners are entitled for enhancement of compensation as modified and re-calculated above, and given in the table below for easy reference.

SI. Head of claim Amount awarded by Amounts

hospital 2 Medical 13000/- 13,000/- expenses 3 Funeral 10,000/- 16,500/- expenses 4 Loss of 0 88000 consortium 5 Loss of estate 0 16500 6 By stander 0 18000 expenses 7 Pain and 25000 25000 -:13:- suffering 8 Loss of love 10000 0 and affection 9 Loss of 504000 1058400 dependency Total 572000 12,45,400 Even though the appellants had claimed only an amount of Rs.7,00,000/- as compensation, I have awarded them future prospects as well as compensation under the conventional heads as laid down in Sarla Verma and Pranay Sethi (supra), Therefore, I have awarded them more compensation than what is claimed in the claim petition. The said course is permissible in view of the law laid down in Nagappa v. Gurudayal Singh [2003 (1) KLT 115 SC] and Rajesh v. Rajbir Singh [2013 (3) KLT 89 SC], In the result, the appeal is allowed, by enhancing the compensation by a further amount of Rs.6,73,400/- with interest at the rate of 7% per annum from the date of petition till the date of deposit, after deducting -:14:- interest for a period of 171 days i.e the period of delay in filing the appeal and as ordered by this Court on 21.10.2021 in C.M.Application No. 2/2012, and proportionate cost. The third respondent is ordered to deposit the enhanced compensation with interest and 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 same shall be disbursed to the appellants 1 and 2/petitioners 1 and 2 in the ratio of 50:50, after deducting their liability towards balance court fee, and in accordance with law. Sd/- C.S.DIAS,JUDGE rmm1/02/2022

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