

Devakiamma vs K.P.Madhukumar

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Court : Kerala

Decided On : Sep-30-2022

Judge : Honourable Mr.Justice Basant Balaji

Appeal No. : MACA/1945/2013

Appellant : Devakiamma

Respondent : K.P.Madhukumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE BASANT BALAJI
FRIDAY, THE 30TH DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944
MACA NO. 1945 OF 2013 OPMV 722/2011 OF MOTOR ACCIDENT
CLAIMS TRIBUNAL ,ERNAKULAM APPELLANT/S:

1 DEVAKIAMMA AGED 58 YEARS W/O. LATE MURALIDHARAN NAIR,
KARUVELIL HOUSE, THRIKKARIYOOR P.O., KOTHAMANGALAM
TALUK, ERNAKULAM DISTRICT 2 ANITHA M AGED 36 YEARS D/O.
LATE MURALIDHARAN NAIR, DO.DO. 3 ASHA M AGED 33 YEARS
D/O. LATE MURALIDHARAN NAIR, DO.DO. 4 ARCHANA M AGED 29
YEARS D/O. LATE MURALIDHARAN NAIR, DO. DO 5 AJITHA M AGED

22 YEARS D/O. LATE MURALIDHARAN NAIR, DO. DO. BY ADV
SRI.B.RAJEEV KOYICKAL

RESPONDENT/S: 1 K.P.MADHUKUMAR AGED 36 YEARS S/O.
PUSHPAN, KUNUMPURAN HOUSE, KULATHUMEDU, ANAVILASAM
P.O., UDUMPANCHOLA TALUK, IDUKKI DISTRICT

-2- 2 BIJU SCARIA S/O. SCARIA, KARAKUNNEL HOUSE,
KATTAPANA P.O., IDUKKI DISTRICT, PIN =- 685 508 3 THE BRANCH
MANAGER CHOLAMANDALAM M.S. GENERAL INSURANCE CO.
LTD, DARE HOUSE, IIND FLOOR, N.S,.C.BOSE ROAD, CHENNAI - 4
MANOHARAN P AGED 47 YEARS S/O. PAPPY, 6/138, INCHIKKAD
HOUSE, VANDIPERIYAR P.O., IDUKKI DISTRICT 5 M.V.THOMAS S/O.
KUNJUVAREED, 8/147,MENACHERRY HOUSE, ANGAMALLY P.O.,
ERNAKULAM DISTRICT 6 THE BRANCH MANAGER NEW INDIA
ASSURANCE CO. LTD, KODUVATH SHOPPING COMPLEX, SUB -
JAIL ROAD, ALUVA, PIN - 683 101. BY ADVS. K.S.ARUN KUMAR
GEORGE CHERIAN (SR.) P.JACOB MATHEW LATHA SUSAN
CHERIAN MATHEWS JACOB (SR.) RESMI THOMAS K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 30.09.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: -3-

JUDGMENT

(Dated this the 30th day of September 2022) This appeal is filed by the petitioners in O.P.(M.V.) No.722 of 2011 on the files of the MACT, Ernakulam. The claim for compensation was filed for the death of one Muraleedharan Nair, who died in an accident at 6.15 am on 14.9.2010 near Sunrise Hospital, Kakkanad. The deceased was travelling in a bus bearing registration No.KL-06 E 2808 driven by the first respondent. The bus hit on the rear side of a tanker lorry bearing registration no.KL 41 9045 which was driven by 4th respondent.

2. The deceased was a head load worker earning a monthly income of Rs.12,000/- . The drivers and owners of the offending vehicles were set exparte. -4-

3. The Insurance company filed a written statement.

It was contended that the accident happened due to the rash and negligent driving of the bus and not because of any fault on the part of the driver of the tanker lorry. The tanker lorry was insured with the company on 14.9.2010. The insurer has not reported the accident and vehicle documents and driving license were not submitted for verification and thus, there is violation of policy conditions. Thus there is no liability to pay compensation to the petitioners.

4. The Tribunal, relying on Exts.A1 to A14 and Ext.B1, awarded a total compensation of Rs.5,14,500/- with interest at the rate of 8% from the date of petitioner as against the claim of Rs.10,23,000/-. Aggrieved by the -5- quantum of compensation, this appeal is filed by the legal heirs of the deceased Muraleedharan Nair.

5. Heard.

6. The main contention raised by the counsel for the appellants is that the deceased was a head-load worker and

Ext.A14 Identity Card proves the same. Ext.A8 is the certificate issued by the Chairman, Kerala Headload Workers Welfare Board, Thrikkakara stating that the yearly income of the deceased for the financial year 2008-2009 was Rs.78,578/-. The Tribunal did not accept Ext.A8 as it was not proved by examining the signatory. The Tribunal therefore inferred that the monthly income as Rs.6,500/- as on the date of accident. Therefore, the Tribunal, taking note of the fact that the deceased would not have received the benefit of Head-load workers' Act after 20.1.2013 and

-6- there is deduction of income, took the monthly income as Rs.5,000/-. Since he was aged 57 years, the multiplier was taken as 9. Thereafter split multiplier method was taken and worked out compensation for loss of dependency and fixed the same at Rs.4,36,500/-.

7. The counsel submits that a head load worker even

though receives benefit under the Headload Workers Act, will continue to do the work and there is no reduction of income and therefore, the Tribunal was not justified in taking split multiplier method for calculating loss of dependency. Relying on the decision reported in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236] the notional income of a person who met with an accident in the year 2010 can be taken as Rs.7,500/- and since he was -7-

between the age group of 50-60 and self employed 10% can be taken as increase of future prospects. Therefore, the monthly income can be fixed $\text{Rs.7500} + 10\% = 8250/-$ Since the appellants/dependents are the wife and 4 children, is to be deducted towards personal expenses. Therefore the monthly income would be Rs.6187.5/- ($8250 \times 3/4$). Taking the monthly income as Rs.6187.5/- , the loss of dependency can be worked out as $\text{Rs.6187.5} \times 12 \times 9 = \text{Rs.6,68,250/-}$.

8. As per the decision reported in National

Insurance Company v. Pranay Sethi [2017 (16) SCC 680], the maximum amount that can be awarded under the head funeral expenses is $\text{Rs.15,000} + 10\%$ escalation for three years which come to Rs.16,500/- , the Tribunal awarded Rs.10,000/- which has to be enhanced as -8- Rs.16,500/- .

9. As per the decision reported in Magma General

Insurance Co.Ltd. v. Nanu Ram Alias Chuhru Ram & Others [(2018) 18 SCC 130] the dependents are entitled for Rs.40,000/- each towards loss of consortium. They are also entitled to 10% increase every three years as per the decision reported in Pranay Sethi (supra) and thus, the 10% increase would come to $\text{Rs.44,000} \times 5$, i.e., Rs.2,20,000/- . The Tribunal has awarded Rs.25,000/- under the said head.

10. The Tribunal has awarded a compensation of

Rs.30,000/- towards loss of love and affection. When loss of consortium is awarded, loss of love and affection cannot be awarded over and above the loss of

consortium. Hence, the amount of Rs.30,000/- awarded by the Tribunal on the -9- head of loss of love and affection is set aside.

11. As far as the compensation for loss of estate is

concerned, nothing was awarded by the Tribunal. Relying on the decision mentioned in Pranay Sethi (supra), the maximum amount of compensation for lost of estate is Rs.15,000 + 10% escalation for three years which comes to Rs.16,500/-.

12. Since Mulraleedharan Nair died before reaching

hospital, the appellants are not entitled for compensation towards pain and suffering and hence, the amount of Rs.10,000/- granted as compensation for pain and suffering is set aside. Accordingly, the following enhancements/deductions are made to the award passed by the Tribunal: -10- Sl. Head of Claim Amt. Awarded Amt. Enhanced No. by Tribunal in appeal (Rs.) (Rs.)

1	Loss of dependency	Rs . 4, 36, 500	Rs . 6, 68
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and suffering 6 Loss of love and affection Rs.30,000 Rs.0 Rs.5,11,500
Rs.9,21,250 Amount enhanced ..Rs.9,21,250-Rs.5,11,500 =Rs.4,09,750/- In the result, the appeal is allowed and the

appellants are entitled to for an amount of Rs.4,09,750/- (Rupees four lakh nine thousand seven hundred and fifty only). All other findings entered by the Tribunal stand confirmed. If any amounts have already been paid, the same shall be granted set off. The claimants shall produce the details of the Bank account before the Insurance

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Company/Tribunal within one month from the date of receipt of a certified copy of this judgment and amount shall be transferred to the Bank account directly through NEFT/RTGS mode, within a period of one month thereafter. If the Bank account is not furnished within the time stipulated, it is made clear that no interest shall run on the enhanced amount after the period stipulated by this Court.

It is also made clear that the appellants would not be entitled for interest for the period of delay of 251 days in filing the Appeal, as per order of this Court dated 17.11.2021, on the enhanced compensation. sd BASANT BALAJI, JUDGE dl/

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