Raji vs Krishnan

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SooperKanoon Citation : sooperkanoon.com/1477424

Court : Kerala

Decided On : Feb-28-2022

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : MACA/1213/2010

Appellant : RAJI

Respondent : Krishnan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA, 1943 AGAINST THE ORDER/JUDGMENT IN OPMV 1039/2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL , IRINJALAKUDA APPELLANT/S:

1. RAJI,W/O. LATE JOSHY, NELLIPRAMABIL HOUSE, MATTATOORKUNNU KODAKARA.

2. MINOR DEVAPRIYA REP. BY HER MOTHER AND GUARDIAN RAJI ... DO ....DO BY ADV SRI.T.N.MANOJ RESPONDENT/S:

1. A.D.KRISHNAN MANAGING DIRECTOR VYSALI PHARMACEUTICALS, KOCHI - 682026

2. DAMODARAN S/O. KESAVAN NAMBOODIRI, PARAYIL HOUSE, SASTANKADAVU, KODANNOOR

3. THE MANAGER, NEW INDIA ASSURANCE COMPANY LTD., TRIPUNITHURA.

4. GIRIJA DAMODARAN, HOUSE NO.106/50, PARAYIL MANA TOWERS, CROSS ROADELAMAKKARA KOCHI 682026

5. KAUSALYA W/O. KOCHUNNI, NELLIPRAMBIL HOUSE, MATTATOORKUNNU KODAKARA

6. KOCHUNNI S/O. RAMAN ... DO ...DO ....

BY ADVS. SRI.V.BINOY RAM SMT.T.C.SOWMIAVATHY THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 28.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellants were the petitioners 1 and 2 in OP(MV)

No.1039/2005 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda. The respondents 5 and 6 in the appeal were the petitioners 3 and 4, and the respondents 1, 2 and 4 in the appeal were the respondents 1, 2 and 4 before the Tribunal. The parties are, for the sake of convenience, referred to as per their status before the Tribunal.

2. The petitioners had filed the claim petition under

Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the death of Joshy (deceased) - husband of the first petitioner, father of the 2 nd petitioner and the son of the petitioners 3 and 4. It was their case that, on 10.01.2005, while the deceased was walking along the western side of the National Highway - 47, a car bearing registration No.KBF 6222, driven by the 2nd respondent in a negligent manner, hit the deceased. The deceased sustained fatal injures and lost his life on 12.01.2005 at the Aswini Hospital. The car was owned by the 1st respondent, insured with the 3rd respondent and insured by the 4th respondent. The deceased was an Auto Consultant cum Driver and he was earning a

monthly income of Rs.4,500/-. The petitioners were the dependents of the deceased. Hence, they claimed a compensation of Rs.8,00,000/- from the respondents. 3 Even though the respondents 1 and 2 entered appearance, they did not file any written statement.

4. The 4th respondent had filed a written statement, contending that, it was the 1st respondent who was the true owner of the car.

5. The 3rd respondent/insurer had filed a written statement admitting that the car had a valid insurance policy in the name of the 1st respondent.

6. The petitioners had produced and marked Exts.A1 to A8 in evidence. The 3rd respondent produced the insurance policy, which was marked as Ext.B1.

7. The Tribunal, after analysing the pleadings and

materials on record, allowed the claim petition, in part, by permitting the petitioners 1 to 3 to recover an amount of Rs.3,46,500/- with interest and proportionate cost.

8. Dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioners 1 and 2 are in appeal.

9. Heard; Sri. Manoj T. N., the learned counsel

appearing for the appellants/petitioners 1 and 2, Sri.Binoy Ram, the learned counsel appearing for the respondents 2 and 4 and Smt.T. C. Sowmiavathy, the learned counsel appearing for the 3rd respondent. Even though notice was served on the respondents 1, 5 and 6, there is no appearance for them.

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

11. Ext.A2 charge sheet filed by the Kodakara Police in Crime No.24/2005 substantiates that the accident occurred due

to the negligence of the 2nd respondent. Indisputably, the 1st respondent was the owner and the 3rd respondent was the insurer of the car. The respondents have not let in any evidence to discredit Ext.A2 charge sheet. The 3 rd respondent has also not proved that the 1st respondent had violated the insurance policy conditions. Therefore, the 3rd respondent is to indemnify the liability of the 1st respondent arising out of the accident. Income

12. The petitioners had claimed that the deceased was an

Auto Consultant cum Driver and he was earning a monthly income of Rs.4,500/-. For want of materials, the Tribunal fixed the notional monthly income of the deceased at Rs.2,000/-.

13. In Ramachandrappa vs. Manager, Royal Sundaram

Alliance Insurance Company Ltd. : (2011) 13 SCC 236, the Honourable Supreme Court has fixed the notional income of a coolie worker in the year 2004 at Rs.4,500/- per month.

14. Following the yardstick in the afore-cited decision and

considering the fact that the accident occurred in the year 2005, I refix the notional monthly income of the deceased at Rs.4,500/- as claimed in the claim petition. Multiplier

15. The deceased was aged 29 years at the time of the accident.

16. In the light of the law laid down in Sarla Varma vs. Delhi Transport Corporation [2010 (2) KLT 802], the relevant multiplier to be adopted is 17. Personal living expenses of the deceased

17. The petitioners had claimed that they were the wife,

son and parents of the deceased. To substantiate their contention, they have produced Ext.A5 family membership certificate. It is also proved that the parents, namely the respondents 3 and 4, were aged 60 and 65 at the time of the accident. Therefore, they are considered as the dependents of the deceased. As they are four in numbers, one-forth of the compensation has to be deducted towards the personal living expenses of the deceased, instead of one-third deducted by the Tribunal, following the principles laid down in Sarla Verma (supra) and National Insurance Co.Ltd v Pranay Sethi [(2017) 16 SCC 680]. Future prospects

18. In the light of the law laid down in Sarla Verma and

Pranay Sethi (supra), and considering the fact that the deceased was aged 29 years at the time of the accident, I hold that the petitioners are entitled to future prospects at 40%. Loss due to dependency

19. Taking into account the above mentioned factors, i.e., the monthly income of the deceased at Rs.4,500/-, the multiplier at 17, future prospects at 40% and after deducting one-fourth of the compensation towards the personal living expenses of

the deceased, I refix the compensation for 'loss due to dependency' of the petitioners 1 to 3 at Rs.9,63,900/-, instead of Rs.2,72,000/- awarded by the Tribunal. Conventional/Traditional heads of compensation

20. 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.

21. 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 'loss of consortium'.

22. In the instant case, the Tribunal has awarded an

amount of Rs.3,000/- under the head funeral expenses and an amount of Rs.25,000/- under the head 'loss of consortium'. Therefore, I enhance the compensation under the head 'funeral expenses' by a further amount of Rs.13,500/- and award an amount of Rs.44,000/- each to the petitioners 1 to 3, namely, the appellants 1, 2 and the 5th respondent i.e., an enhancement by a

further amount of Rs.1,07,000/-. I also award the petitioners/appellants and the 5th respondent an amount of Rs.16,500/- under the head 'loss of estate. Loss of love and affection

23. The Tribunal has awarded an amount of Rs.15,000/- under the head 'loss of love and affection'.

24. 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 amount to duplication of compensation. Therefore, I set aside the amount of Rs.15,000/- awarded under the head 'loss of love and affection'.

25. With respect to the compensation awarded under the heads 'pain and sufferings' and 'transportation expenses', I find that the Tribunal has awarded reasonable and just compensation.

26. On a comprehensive re-appreciation of the pleadings

and materials on record and the law referred to in the afore- cited precedents, I hold that the appellants 1, 2 and the 5 th respondent/petitioners 1, 2 and 3 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 Amounts

Court 1 Transport to hospital 900 900 2 Medical expenses 20,600 20,600 3 Funeral expenses 3,000 16,500 4 Pain and sufferings 10,000 10,000 5 Loss of love and 15,000 0 affection 6 Loss of estate 0 16,500 7 Loss of consortium 25,000 132000 8 Loss due to dependency 2,72,000 9,63,900 Total 3,46,500 11,60,400

27. Even though the petitioners had claimed only an

amount of Rs.8,00,000/- as compensation in the claim petition, I have awarded them more compensation than what is claimed in the claim petition, following the principles laid down in Sarla Verma and Pranay Sethi (supra) by awarding them 'future prospects' as well as 'compensation under the conventional heads'. The said course is permissible in view of the law laid down by the Honourable Supreme Court in Nagappa v. Gurudayal Singh [2003 (1) KLT 115 (SC)] and Rajesh vs. Rajbir Sing [2013 (3) KLT 89 (SC)]. In the result, the appeal is allowed, by enhancing the compensation by an amount of Rs.8,13,900/- with interest at the rate of 6% per annum from the date of petition till the date of deposit, after deducting interest for a period of 53 days, i.e., the period of delay in filing the appeal and as ordered by this Court on 09.11.2021 in C.M.Appln.No.1/2010, and proportionate cost. The 3rd respondent is ordered to deposit the enhanced compensation with interest and proportionate cost before the Tribunal within a period of 60 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 1 and 2 and the 5th respondent/petitioners 1 to 3, after deducting their liability towards court-fee, in the ratio of 40:40:20, and in accordance with law.

Sd/- C.S.DIAS, JUDGE rkc/28.02.2022