

Mini & Others vs Joy Joseph & Others

Mini & Others vs Joy Joseph & Others

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Court : Kerala

Decided On : Jan-31-2022

Judge : Honourable Mrs. Justice M.R.Anitha

Appeal No. : MACA/1586/2010

Appellant : Mini & Others

Respondent : Joy Joseph & Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE M.R.ANITHA
MONDAY, THE 31ST DAY OF JANUARY 2022 / 11TH MAGHA, 1943
MACA NO. 1586 OF 2010 AGAINST THE AWARD IN OPMV 719/2006
DATED 20.2.2010 ON THE FILE OF THE MOTOR ACCIDENT CLAIMS
TRIBUNAL , IRINJALAKUDA APPELLANTS/PETITIONERS IN OP(MV):

1 MINI, W/O LATE RAMACHANDRAN CHERUPPADY HOUSE,NH
COLONY DESOM,NEDIYIRUPPU VILLAGE, ARIMBRA PO, ERANADU
TALUK,, MALAPPURAM DISTRICT. 2 SANDRA C (MINOR) AGED 10
YEARS D/O.LATE RAMACHANDRAN,CHERUPPADY HOUSE,, NH
COLONY DESOM,NEDIYIRUPPU VILLAGE,ARIMBRA PO, ERANADU

TALUK,MALAPPURAM DISTRICT, REP.BY HER NEXT FRIEND AND GUARDIAN MOTHER IST APPELLANT MINI. 3 JIJESH.C (MINOR) AGED 6 YEARS S/O.LATE RAMACHANDRAN,CHERUPPADY HOUSE, NH COLONY DESOM,NEDIYIRUPPU VILLAGE, ARIMBRA PO, ERANADU TALUK, MALAPPURAM DISTRICT,REP.BY HER NEXT FRIEND AND GUARDIAN MOTHER IST APPELLANT MINI. 4 CHINNA, M/O.LATE RAMACHANDRAN, CHERUPPADY HOUSE,NH COLONY DESOM, NEDIYIRUPPU VILLAGE, ARIMBRA P O, ERANADU TALUK,MALAPPURAM DISTRICT. BY ADVS. SRI.P.V.BABY SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS 1 TO 3 IN OP(MV): 1 JOY JOSEPH, S/O JOSEPH KATTADY HOUSE,PUTHANANGADY PO, ANGADIPURAM, MALAPPURAM DISTRICT 679 321. 2 JAYARAJAN, S/O.RAVUNNI VAIDYAR PUDUSSERYPARAMBIL HOUSE,PULAMANTHOL PO, MALAPPURAM DISTRICT 679 323. 3 ORIENTAL INSURANCE CO.LTD. RAVIPURAM M.G.ROAD,ERNAKULAM DISTRICT,KOCHI 682 016. BY ADV SRI.A.R.GEORGE ADV.A.R GEORGE THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 31.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

1. The appellants are the claimants in O.P.(MV).719/2006 on

the file of Motor Accidents Claims Tribunal, Irinjalakuda. The claim petition has been filed under Section 166 of the Motor Vehicles Act, 1988 (in short, the Act) claiming compensation on account of the death of Ramachandran out of a motor accident. First appellant is the widow, appellants 2 and 3 are the children and 4th appellant is the mother of deceased Ramachandran.

2. It is alleged that on 04.03.2006 at about 10 p.m while the

deceased Ramachandran was travelling in KL-11/D 1780 jeep and reached at Muringoor through Thrissur Ernakulam Sector of NH 47, a stage carriage bus with No.KL-10/S 5337 driven by the 2nd respondent came in a rash and negligent manner without observing traffic rules from the opposite direction and dashed against the jeep. Out of the same, deceased sustained fatal injuries and though he was taken to St. James Hospital, Chalakudy while undergoing treatment, succumbed to the injuries on the same day at about 11.30 p.m. It is alleged that the accident happened due to the rash and negligent driving of the Bus by the 2nd respondent and first respondent is the owner of the offending vehicle and third respondent is the insurer. Appellants/claimants (hereinafter be referred as claimants) made a claim of Rs.14,20,500/- in total.

3. Before the Motor Accident Tribunal (in short Tribunal)

respondents 1 and 2 remained ex parte and 4th respondent the insurer of the jeep filed written statement admitting the insurance coverage and contended that 2 nd respondent is responsible for the accident. Third respondent, the insurer of the offending vehicle, also filed written statement admitting the insurance coverage of the offending vehicle, but further contended that the jeep was overloaded with passengers and the jeep driver was responsible for the accident.

4. There was no oral evidence from either side. Exts.A1 to

A31 were marked from the side of the appellants/claimants. The Tribunal on evaluating the pleadings and other materials produced from the side of the claimants found that accident occurred due to the rashness and negligence on the part of 2 nd respondent. Hence 1st respondent was held vicariously liable and 3 rd respondent insurer is held liable to make

good the loss sustained to the claimants and fixed a total compensation of Rs.4,28,200/- with interest at the rate of 7% from the date of petition i.e 13.07.2006.

5. Dissatisfied with the award passed by the Tribunal, the appellants came up before this Court on various grounds raised in the memorandum of appeal.

6. Service was completed as against the 2nd respondent. But

there is no appearance. Third respondent appeared through standing counsel. Hence notice to first respondent was dispensed with at the risk of claimants. Lower court records were called for and both sides were heard.

7. Liability of the 3rd respondent is not disputed and the dispute between the parties is only with respect to the quantum of compensation awarded under various heads by the Tribunal.

8. The deceased was found to be 34 years by the Tribunal

in view of Ext.A5 document, which is produced from the side of the appellants. The deceased was claimed to be a quarry worker earning Rs.7,000/- per month. In the absence of any satisfactory evidence to prove the avocation or income, the Tribunal fixed Rs.2,700/- as the notional income for assessing the compensation. The accident admittedly was in the year 2006.

9. In Ramachandrappa v. The Manager, Royal Sundaram

Alliance Insurance Company Limited [(2011) 13 SCC 236] the Apex Court reckoned the monthly income of a coolie (manual labourer), who met with a road accident in the year 2004, at the age of 35 years, notionally as Rs.4,500/-. The Apex Court held that, the claimant who was working as a coolie cannot be expected to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in the facts of the said case,

the Tribunal should have accepted the claim of the claimants. The Apex Court made it clear that, in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant, in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.

10. In Syed Sadiq Etc. v. Divisional Manager, United

India Insurance Co. Ltd. [(2014) 2 SCC 735], taking note of the earlier decision in Ramachandrappa's case (supra), the Apex Court reckoned the monthly income of a vegetable vendor, who met with a road accident in the year 2008, at the age of 24 years, notionally as Rs.6,500/-. In the said decision, the Apex Court held that, a labourer in an unorganised sector doing his own business cannot be expected to produce documents to prove his monthly income. Therefore, there was no reason for the Tribunal and the High Court to ask for evidence to prove his monthly income. Going by the state of economy prevailing at that time and the rising prices in agricultural products, the Apex Court accepted his case that a vegetable vendor is reasonably capable of earning 6,500/- per month.

11. In the present case, the accident was on 04.03.2006

and the deceased was claimed to be a quarry worker. Hence his monthly income can notionally be fixed as Rs.5,500/- following the principles laid down in the above cited decisions instead of Rs.2,700/- fixed by the Tribunal.

12. In Sarla Verma (Smt.) & Ors. v. Delhi Transport

Corporation & Anr. [2010 (2) KLT 802 (SC)] the Apex Court laid down the guidelines for determination of quantum of compensation in case of death in motor accident following the principles in U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors. [1995 (2) KLT 218 (SC) : (1996) 4 SCC 362] as well as the principles laid down in the General Manager, Kerala State Road Transports Corporation v. Susamma Thomas [(1994

(1) KLT 67 (SC) : (1994) 2 SCC 176]. It has been held that

compensation awarded should be just compensation and that the compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. The assessment of compensation though involve certain hypothetical considerations, should nevertheless be objective and justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication and fairness and uniformity in decision making process and the decisions. Though it is not possible to have a mathematical precision or identical awards in assessing compensation, same or similar facts should lead to awards in the same range.

13. In National Insurance Company Ltd. v. Pranay Sethi [2017 (4) KLT 662 (SC)] a Constitution Bench of the Apex Court dealt with the concept of 'just compensation' and

held that the same has to be determined on the

foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The concept of just compensation has to be viewed through the prism of fairness, reasonableness and non-violation of the

principle of equitability. It is also emphasized that the compensation should not be a windfall nor be a pittance.

14. The Tribunal awarded Rs.2,700/- as monthly income

and accordingly the annual income was arrived at Rs.32,400/-. From that, 1/3rd was deducted towards personal expenses of the deceased and the balance available is calculated as Rs.21,600/- for assessing the compensation. Multiplier of '17' was adopted and towards loss of dependency an amount of Rs.3,67,200/- was awarded. Further taking into account the fact that he died after 2-3 hours after the accident at hospital, an amount of Rs.6,000/- was awarded towards pain and suffering. Rs.25,000/- was granted towards consortium to the first petitioner. Rs.25,000/- was further awarded towards compensation for loss of love and support. Further Rs.5,000/- was awarded towards funeral expenses and transportation expenses. Accordingly a total compensation of Rs.4,28,200/- was awarded.

15. The accident occurred on 04.03.2006. The deceased

was 34 years at the time of accident. The monthly income is already fixed as Rs.5,500/-. In Sarla Verma's case the Apex Court made a rule of addition of 50% of actual salary in view of the imponderables and uncertainties towards future prospects where the deceased has permanent job and was below 40 years and the said addition was limited to 30% if the age of the deceased was 40 - 50 years and further it was prescribed that there should be no addition where the age of deceased is more than 50 years.

16. In Pranay Sethi's case, the Constitution Bench laid

down that in case of self employed persons or persons with fixed salary there should be addition of 10% in between the age group of 50 - 60 years and an addition of 25% between the age group of 40 - 50 and 40%

where deceased was below 40 years and it is also held that the established income also provided as the income minus tax component in the case of salaried persons.

17. So, in the present case, since the deceased comes

under the category of self-employed person, the appellants are entitled to get 40% enhancement towards future prospects. If so, the monthly dependency would be Rs.7,700/- (40% of 5,500/- is Rs.2200/-).

18. On the question of deduction towards personal

expenses in Sarla Verma's case, the Apex Court held that personal and living expenses of the deceased should be deducted from the monthly income to calculate the contribution to the dependants and where number of dependent family members is between 2 and 3, the deduction towards dependant family members is 1/3 and where number of dependant family members is between 4 and 6 the deduction would be 1/5 and it would be 1/5 when the number of family members exceeds six and that is followed in Reshma Kumari & Ors. v. Madan Mohan & Anr. [(2013) 9 SCC 65] as made out in the facts and circumstances of the case.

19. In Reshma Kumari's case, in paragraph No.38 it has

been provided that one must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependant members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.

20. There are four appellants. So one-fourth has to be

deducted from the same towards personal expenses ($1925 = 7700 \times$) ie, 5775. Since the deceased was 34 years, the multiplier to be applied is '16'. So, towards loss of dependency, appellants are entitled to get Rs.1108800/- ($5775 \times 16 \times 12$). From that the amount already awarded to be deducted. So the balance amount towards loss of dependency is Rs.741,600/- ($1108800 - 367200$).

21. The next contention of the learned counsel is with

regard to the enhancement of the conventional heads as per the directions in Pranay Sethi's case followed by Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. (2018 (18) SCC 130) In that decision, the Apex court has held that Rs.15,000/- to be awarded under the head loss of estate. Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses.

22. The learned counsel would contend that the Apex

Court has also held that the above amounts should be revisited on percentage basis in every three years and enhancement should be at the rate of 10% in a span of three years. The learned counsel would contend that the

judgment in Pranay Sethi's case was on 31.10.2017. So

three years have elapsed. So the appellants are entitled for 10% enhancement on the said amounts. So according to him, the amounts to be awarded under the above heads should be Rs.16,500/- each under the head of loss of estate and funeral expenses and Rs.44,000/- each towards loss of consortium.

23. In this context, Rasmita Biswal & Ors. v. Divisional

Manager, National Insurance Co. Ltd. & Anr. [CDJ 2021 SC 1024] is to be taken note of. That was a case in which the accident occurred on 09.05.2013 and the judgment of the High Court of Orissa at Cuttack in

MACA No.965/2016 was dated 07.03.2018. In that decision, under the conventional heads, following the principles in Pranay Sethi's case, the claimants were found to be entitled for 10% enhancement of Rs.16,500/- towards the loss of estate and Rs.44,000/- towards spousal consortium. Following that principles, a learned Single Judge of this Court in MACA No.1290/2011 dated 10.12.2021 granted 10% escalation on conventional heads irrespective of the date of accident. In Pranay Sethi's case while fixing 10% escalation in every three years, no reference was made with respect to the date of accident also. So I am of the considered view that claimants are entitled for 10% increase on conventional heads.

24. Next is with regard to the consortium to be

awarded, the law laid down by the Apex Court in Magma General Insurance Co.'s case is relevant to be taken note of. In that decision, the Apex Court while dealing with consortium in legal parlance it has been classified into 'spousal consortium', 'parental consortium' and 'filial consortium'. The spousal consortium is described as rights pertaining to the relationship of husband - wife which allows compensation to the surviving spouse for loss of company, society, co-operation, affection and aid of the other in every conjugal relation. (Black's Law Dictionary (5th ed. 1979). Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. Filial consortium is the right of the parents to compensation in the case of an accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their life time. Children are valued for their love, affection, companionship and their role in the family unit. Detailed description regarding filial consortium has also been made therein. It states that filial consortium is the right of parents to compensation in the case of an accidental death of a child. In case where a parent has lost their minor child or unmarried son or daughter, the parents are entitled to be

awarded loss of consortium under the head of filial consortium.

25. Parental consortium can be granted to the children

upon the premature death of a parent for the loss of parental aid, protection, affection, society, discipline, guidance and training apart from spousal consortium.

26. In this case the deceased was 34 years old living

with his wife and children. Fourth claimant - mother is 55 years old. Following the principles laid down in Magma General Insurance Co. Ltd v. Nanu Ram alias Chuhru Ram and Ors. [(2018) 18 SCC 130], the deceased, being a married son, 4th claimant will not get any amount towards loss of consortium. But claimants 1 to 3 are entitled to get Rs.44,000/- (with 10% increase as Rs.40000/-) each towards loss of consortium, amounting to Rs.1,32,000/-. From that Rs.50,000/- already awarded towards loss of consortium and love and support has to be deducted. So the balance amount would be Rs.82,000/-. The tribunal awarded Rs.5,000/- towards funeral and transportation expenses. As per the directions in Pranay Sethi's case, claimants are entitled to get Rs.15,000/- with 10% increase after 3 years. So also, under the head loss of estate, Rs.15,000/- with 10% increase, the appellants are entitled to get an amount of Rs.16,500/- each under those heads. Out of Rs.5000/- awarded towards funeral and transportation awarded by the Tribunal, Rs.2,500/- can be taken as the amount already awarded towards funeral (though a total amount is awarded towards transportation expenses and funeral expenses). So the balance amount towards funeral expenses would be Rs.14,000/- [16500-2500].

27. In the result, appeal is allowed in part and appellants 1 to

4 will be entitled for an enhanced compensation of Rs.8,54,100/- (Rupees Eight lakhs fifty four thousand one hundred only) [7,41,600 + 82000/ + 14000+16500] in this appeal, which will carry interest at the rate

of 7.5% per annum from the date of petition till realisation i.e. 13.07.2006. The enhanced amount shall be apportioned among the appellants 1 to 4 in the ratio 40: 20: 20: 20 deducting the consortium awarded to claimants 1 to 3. 20% amount due towards appellant No.3, who will be a minor even now shall be deposited in a nationalized bank and fixed deposit receipt shall be produced before the Tribunal for safe custody till the third appellant attains majority. The third respondent insurer shall satisfy the additional compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of a certified copy of this judgment. The disbursement of the amount to the appellants shall be in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06.09.2019 and clarified further in Official Memorandum No.D1-

provide their Bank Account details (attested copy of the relevant page of the Bank Passbook having details of the Bank Account Number and IFSC Code of the branch) before the Tribunal, with copy to the standing counsel for the insurer, within one month from the date of receipt of a certified copy of this judgment. Parties shall bear their respective costs.

Sd/- M.R.ANITHA shg JUDGE

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