

Sarala Vs. Asokan

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Court : Kerala

Decided On : Dec-19-2014

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Sarala

Respondent : Asokan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA FRIDAY, THE 19^H DAY OF DECEMBER 2014 28TH AGRAHAYANA, 1936 MACA.No. 3076 of 2014 () ----- AGAINST THE AWARD IN OPMV13282005 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR DATED 25-07-2014 APPELLANTS/PETITIONERS 2 TO 4 ----- 1. SARALA, W/O.LATE RAVI, THEKKEDATH PARAMBIL HOUSE, P.O. VIYYUR THRISSUR - 10.

2. KARTHIYANI, W/O.GOVINDAN, THEKKEDATH PARAMBIL HOUSE, P.O. VIYYUR THRISSUR - 10.

3. VIMALA, W/O.LATE RAVI, THEKKEDATH PARAMBIL HOUSE, P.O. VIYYUR THRISSUR - 10. BY ADV. SRI.P.V.CHANDRA MOHAN RESPONDENTS/RESPONDENTS: ----- 1. ASOKAN, S/O.MATHU,

MAMBULLY HOUSE, P.O.MANAKODY THRISSUR DISTRICT-680012 2. JOJU, S/O.JOSE, THEKKEKARA HOUSE, P.O. MANAKODY, THRISSUR DISTRICT.-680012 3. NATIONAL INSURANCE CO.LTD., BRANCH OFFICE, P.B.NO.89, 2ND FLOOR AMBIKA ARCADE, M.G.ROAD, THRISSUR-68001 R3 BY ADV. SRI.P.JACOB MATHEW R BY SRI.M.A.GEORGE THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 19.12.2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: AL/- T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ., -----
- - - M.A.C.A No.3076 of 2014 - - - - - Dated this the 19th day of December 2014

JUDGMENT

Asha, J., The appellants are the legal heirs of the deceased Ravi who met with an accident on 30.12.2004. The deceased was hit by an autorikshaw bearing registration No.KL-8/AA2543 which came from the opposite side, while he was riding a motor cycle along the Peringavu-Pallimoola Public road. He sustained very serious injuries and was admitted in Medical College Hospital, Thrissur. He died on 3.12.2009 while the claim petition filed before the Motor Accidents Tribunal seeking compensation was pending.

2. The appellants claimed that the deceased was a loading and unloading worker earning a monthly income of Rs.6000/-. The claim petition was filed seeking compensation to the tune of Rs. 6 lakh.

3. Immediately after the accident the deceased was admitted in the hospital on 30-12-2004 and underwent M.A.C.A No.3076 of 2014 :2: treatment there as an in-patient for the period upto 10.1.2005. He sustained multiple fracture of facial bones, ethmoid, maxilla, USG and retinal detachment. The injuries resulted in optic nerve injury and retinal detachment. Ext.A7 discharge card reveals that he was treated with systemic, antibiotic, ante-inflammatory medicines and steroids. Ext.A8 report of CT brain plain reveals multiple facial fractures involving PNS and left orbit. It was also found that he sustained retinal detachment, choroidal detachment and vitreous haemorrhage. 40% permanent disability was assessed as per Ext.A10 Ophthalmic report. 10% disability was assessed as per Ext.A11.

The Tribunal assessed the whole body permanent disability as 46%. The Tribunal awarded a sum of Rs. 223718.55/- compensation. At the same time deducted 25% of it towards contributory negligence.

4. The appellants have filed this appeal seeking enhancement of compensation on the ground that the amount awarded under various heads are thoroughly inadequate. In the Award, the Tribunal found that the deceased was also responsible for the accident as he had consumed alcohol and was under the influence of alcohol. Therefore, out of the total M.A.C.A No.3076 of 2014 :3: amount awarded, only 75% of the award amount was admissible to the appellants. The appellants herein, while seeking enhancement of compensation, have challenged the findings regarding the contributory negligence also.

5. We heard the learned Senior Counsel appearing for the Insurance Company who vehemently opposed the claim for enhancement.

6. Learned counsel for the appellant relying on the decision reported in Jiju Kuruvila and others v. Kunjamma Mohan and others (2013 ACJ2141 argued that contributory negligence should not have been attributed on the part of the deceased in the absence of the any evidence for the same. He also relied on Shybu Mathew V State of Kerala 2012 (1) KLT653 and contended that there was no medical examination in order to come to a conclusion that the deceased was under the influence of alcohol. It was also pointed out that in the judgment of the Supreme Court, it has been held that mere suspicion on the basis of the scene mahazar or post mortem report cannot be a factor to arrive at a finding regarding the contributory negligence. The Tribunal's finding was merely on M.A.C.A No.3076 of 2014 :4: the basis of an entry in Ext A2 wound certificate as to smell of alcohol and under influence of alcohol. Tribunal found fault on the part of the deceased, even in the absence of any further evidence in the matter and found that he was under the influence of alcohol. There was no material to arrive at a finding that the accident occurred on account of the contributory negligence on the part of the deceased. In Shybu Mathew V State of Kerala 2012 (1) KLT653 this court held that mere smell of alcohol is not sufficient to hold that a person was intoxicated.

7. Moreover Tribunal found that the deceased was a person already having optic nerve injury and retinal detachment. We find that the said assumption was formed on a misreading of the discharge certificate Ext A3, where the concerned medical officer had made the diagnosis at the time of discharge and noted that the patient had optic nerve injury and retinal detachment. The Tribunal found the influence of alcohol coupled with the optic nerve injury and the retinal detachment caused the accident and fixed the percentage of contributory negligence on the part of the deceased at 25%. In the light of these circumstances and aforesaid judgments, we find that there was no material on M.A.C.A No.3076 of 2014 :5: record sufficient enough to arrive at the conclusion as to contributory negligence. Therefore we are unable to approve the findings of the Tribunal attributing 25% negligence on the part of the deceased. We therefore find that the contributory negligence attributed on the deceased can be reduced to 5%.

8. Similarly the Tribunal has assessed compensation reckoning the income of the deceased at the rate of Rs. 2500/-. We find that the Tribunal has computed compensation under the head loss of earning power for a period of 5 years i.e up to the date of death of the deceased, reckoning the monthly income of Rs.2,500/- for a period of 5 years. Since the Tribunal has found 46% disability and the injured is no more, loss of earning power ought to have been computed reckoning the disability factor. The deceased was a headload worker. We find that the monthly income reckoned @Rs. 2500/- was too low. The wages at the relevant time was high and a sum of Rs. 4500/- ought to have been reckoned as income.

9. But it is to be noticed that there would not be any substantial difference even if we reckon the income as Rs. 4,500/-, on application by multiplier and disability factor of M.A.C.A No.3076 of 2014 :6:

46. 8%. Therefore, we maintain the amount awarded under the head of loss of earning power.

10. Under the head of compensation for pain and suffering, the Tribunal has awarded only a sum of Rs. 20,000/-. Having regard to the nature of the injuries sustained and the treatment he had undergone, we find that the amount awarded is thoroughly inadequate. Therefore, we enhance the amount to Rs. 30,000/- .

11. We find that the compensation awarded under other heads are just and reasonable. We do not find any reason for enhancing the compensation awarded by the Tribunal under any other heads. Accordingly, we modify the award as follows: Sl. Head of claim Amount Modified No awarded award amount. 1 Transportation charges 3000 3000 Damage to clothing, articles 2 and cycle damage etc. 1500 1500 Bystander expenses for one 3 month 5000 5000 4 Extra nourishment charges 2000 2000 5 Medical expenses 7218.55 7218.55 6 Pain and suffering 20000 30000 Compensation for loss of 7 amenities in life. 15000 15000 M.A.C.A No.3076 of 2014 :7: Sl. Head of claim Amount Modified No awarded award amount. Compensation for shortened 8 expectancy of life 20000 20000 Loss of earning power for a 9 period of 5 years. 150000 15000 223718.55 233718.55 (Rupees Two lakh Thirty three Thousand Seven hundred and eighteen only) 12. The appellants will be entitled to the entire compensation less 5% on account of contributory negligence i.e 95% of the amount awarded.

13. The interest awarded by the Tribunal at the rate of 8.5% p.a. is too low and we fix the interest at the rate of 9% p.a from the date of petition in the light of the decision of the apex court reported in *Supre Debi(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.* [(2009)4 SCC513. The Insurance Company is directed to deposit the entire amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. The appeal is allowed as above. Sd/- M.A.C.A No.3076 of 2014 :8: T.R.RAMACHANDRAN NAIR (JUDGE) Sd/- P.V.ASHA (JUDGE) AL/- True copy P.A to Judge correct one

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