

Ithikutty Vs. K.Anvar

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Court : Kerala

Decided On : Dec-15-2014

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

Appellant : Ithikutty

Respondent : K.Anvar

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 MONDAY, THE 15TH DAY OF DECEMBER 2014 24TH AGRAHAYANA, 1936 MACA.No. 1247 of 2011 (I) ----- AGAINST THE AWARD IN OPMV13722005 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, MANJERI DATED 14-07-2009 APPELLANTS/PETITIONERS: ----- 1. ITHIKUTTY, (MOTHER OF DECEASED IN THE ACCIDENT), W/O.KUNHIMOHAMED (LATE), PALOTIL HOUSE P.O.CHUNKATHARA, NILAMBUR TALUK, MALAPPURAM DISTRICT.

2. SUNEERA, W/O.IBRAHIM(DECEASED IN THE ACCIDENT), PALOTIL HOUSE, D/O.SHOUKATH KIDATH PARAMBAN HOUSE, P.O.KURUMBALANGODE WEST CHUNGATHARA, NILAMBUR TALUK, MALAPPURAM DISTRICT. BY ADVS.SRI.K.VIDYASAGAR SRI.K.M.MOHAMED ABDURAHIMAN THOPPIL RESPONDENTS/RESPONDENTS: ----- 1. K.ANVAR, S/O.POCKER, KANCHIRANPARA HOUSE,

P.O.NAMBOORIPOTTY, MANIMOOLY NILAMBUR TALUK, MALAPPURAM DISTRICT (DRIVER).

2. K.ANVAR, S/O.POCKER, KANCHIRANPARA HOUSE, P.O.NAMBOORIPOTTY, MANIMOOLY NILAMBUR TALUK, MALAPPURAM DISTRICT (OWNER).

3. UNITED INDIA INSURANCE CO. LTD., BRANCH OFFICE, P.O.NILAMBUR, MALAPPURAM DISTRICT. R,R3 BY ADV. SRI.MATHEWS JACOB (SR.) R,R3 BY ADV. SRI.P.JACOB MATHEW THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 15-12-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: AL/- T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ., - - - - - M.A.C.A. No. 1247 of 2011 - - - - - Dated this the 15th day of December 2014

JUDGMENT

Ramachandran Nair, J., This appeal is filed by the mother and widow of deceased Ibrahim aggrieved by the inadequacy of compensation. The accident occurred on 28.10.2005 while he was travelling on a motor cycle bearing Registration No.KL-D-1322 from Vazhikkadavu to Nilambur. The offending vehicle is a taxi bearing Registration No. KL10J750 which hit on the motor cycle and he sustained fatal injuries and succumbed to the injuries. The total claim was Rs.11 lakh. The Tribunal has granted only Rs. 3,80,500/-.

2. The evidence adduced before the Tribunal is by examining the mother who deposed before the tribunal that he was getting Rs. 6500/- per month as a mason worker. The Tribunal was of the view that the monthly income is not properly proved. We have gone through the discussion of the evidence. M.A.C.A. No. 1247 of 2011 :2: The Tribunal has fixed the compensation in the following manner:

Sl.No.	Heads	Amount (in Rs)
1	Transport to hospital	1000
2	For funeral expenses	2000
3	Pain and suffering	5000
4	For loss of estate	2500
5	Loss of consortium	5000
6	For love and affection	5000
7	For loss of dependency	(30000x2x18/3)
	TOTAL	38050

3. Learned counsel for the appellant submitted that the tribunal has adopted Rs.2500/- per month for fixing the compensation and the multiplier 18 has adopted. The learned counsel submitted that the amount

awarded for funeral expenses, pain and suffering, loss of estate, loss of consortium and loss of love and affection is too low.

4. Learned Sr. Counsel for the Insurance Company Sri. Mathew Jacob submitted that the Tribunal can fix a reasonable amount based on the monthly income. It is submitted that the amount cannot be exorbitant.

5. The evidence of the mother was before the Tribunal to M.A.C.A. No. 1247 of 2011 :3: prove the income. As rightly pointed out by the learned counsel for the appellant there will not be any documentary evidence to prove the monthly income in the light of the fact that the deceased was only a mason. Therefore, the question will be whether a reasonable amount has been fixed.

6. The accident occurred in the year 2005. In one of the decisions of the apex Court reported in *Minu Rout and another v. Satya Pradyumma Mohapatra and others* (2013 ACJ2544 considered a case of a daily labourer and in a case where the Tribunal fixed the amount Rs. 3000/- per month. It was held that Rs.4500/- can be taken as a reasonable amount. Unlike the case of a daily labourer, the deceased was a skilled labourer being a mason. Therefore, a reasonable amount will have to be assessed. According to us, considering the fact that he was only aged 27 and was a mason, he would have been earning a very good income. We find it appropriate to fix Rs. 5000/- as the monthly income of the deceased. 1/3 will have to be deducted towards his personal expenses and going by the decision in *Sarala Varma V. Delhi Transport Corporation* (2010 (2) KLT802 the multiplier we adopted is 17. In that view of the M.A.C.A. No. 1247 of 2011 :4: matter, the compensation towards loss of dependency will be Rs. 6,80,000/-. We also grant Rs. 25,000/- towards funeral expenses and Rs. 1 lakh towards loss of consortium.

7. One of the items, the learned counsel for the appellant seeks enhancement is for loss of love and affection. We have already awarded Rs. 1 lakh towards loss of consortium. We fix an amount of Rs. 25,000/- towards loss of love and affection. Accordingly, the total compensation will be Rs. 8, 38,000/-.
Sl.No. Heads Amount
(in Rs) 1 Transport to hospital 1000 2 For funeral expenses 25000 3 Pain and suffering 5000 4 For loss of estate 2500 5 Loss of consortium 100000 6 For love and affection 25000 For loss of dependency 7 (40000x17)=6,80,000 680000

TOTAL 838,500 (Rupees Eight lakh Thirty Eight thousand Five hundred only) 8. We are of the view that the interest at the rate of 7% p.a is too low and we fix the interest at the rate of 9% p.a from the date of petition by relying upon the decision of the apex court reported in *Supe Dei(Smt.) & Ors. v. National Insurance Co. M.A.C.A. No. 1247 of 2011 :5: 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.

9. The appellant No.2 will be entitled for Rs. 1 lakh towards loss of consortium and the appellant No. 1 will be entitled for the amount we have awarded towards love and affection. The balance amount will be divided equally between them. The appeal is allowed as above. No cost. Sd/- T.R.RAMACHANDRAN NAIR (JUDGE) Sd/- P.V.ASHA (JUDGE) AL/- True copy P.A to Judge M.A.C.A. No. 1247 of 2011 :6:

16. 12. Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. (2011(13) (SCC) 236) M.A.C.A. No. 1247 of 2011 :7: . T.R.RAMACHANDRAN NAIR (JUDGE) P.V.ASHA (JUDGE) AL/- draft ready T.R.RAMACHANDRAN NAIR (JUDGE) P.V.ASHA (JUDGE) AL/- M.A.C.A. No. 1247 of 2011 :8:

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