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P.K.Radhakrishnan vs Roy Thomas

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Court : Kerala

Decided On : Aug-04-2020

Judge : Honourable Mr.Justice K.Vinod Chandran

Appeal No. : MACA/1959/2012

Appellant : P.K.Radhakrishnan

Respondent : Roy Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN TUESDAY, THE 04TH DAY OF AUGUST 2020 / 13TH SRAVANA, 1942 M.A.C.A.No.1959 OF 2012 AGAINST THE AWARD IN O.P.(MV).345/2010 DATED 04-04-2012 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM APPELLANTS/ PETITIONERS:

1 P.K.RADHAKRISHNAN, S/O.KRISHNAN ACHARI, AGED 70, KALATHUR HOUSE, THAMPALAKKADU P.O, THEKKUMBHAGOM, MOOLAPUZHAPADY, KANJIRAPPILLY VILLAGE, KANJIRAPPILLY TALUK, KOTTAYAM DISTRICT. 2 RADHAMANI, W/O.P.K.RADHAKRISHNAN, KALATHUR HOUSE, THAMPALAKKADU

P.O, THEKKUMBHAGOM, MOOLAPUZHAPADY, KANJIRAPPILLY VILLAGE, KANJIRAPPILLY TALUK, KOTTAYAM DISTRICT. 3 SINDHU K.RADHAKRISHNAN, D/O.P.K.RADHAKRISHNAN, KALATHUR HOUSE, THAMPALAKKADU P.O, THEKKUMBHAGOM, MOOLAPUZHAPADY, KANJIRAPPILLY VILLAGE, KANJIRAPPILLY TALUK, KOTTAYAM DISTRICT. 4 BINDHU K.RADHAKRISHNAN, D/O.P.K.RADHAKRISHNAN, KALATHUR HOUSE, THAMPALAKKADU P.O, THEKKUMBHAGOM, MOOLAPUZHAPADY, KANJIRAPPILLY VILLAGE, KANJIRAPPILLY TALUK, KOTTAYAM DISTRICT. BY ADVS. SRI.MATHEWS K.PHILIP SMT.T.MANASY

RESPONDENTS/ RESPONDENTS: 1 ROY THOMAS, S/O.THOMAS, THENATTU NIRAPPEL HOUSE, KAILUVETTA MADA BHAGOM, MULAKKULAM P.O, PIRAVOM, ERNAKULAM DISTRICT-686664. 2 SABU KURIAN, S/O.KURIAN, CHUMAPPUNKAL HOUSE, ELIKULAM, POOVARANY, KANJIRAPPILY, KOTTAYAM DISTRICT-686577. MACA.1959/2012 - 2 -

3 THE MANAGER, NATIONAL INSURANCE COMPANY LIMITED, CHERUPUSHPAM BUILDING, MAIN RAOD, PALA, KOTTAYAM - 686 575. 4 MAJESH K.GOPI, KUNNEPARAMBIL HOUSE, KANJIRAPPILLY P.O, KANJIRAPPILLY VILLAGE, KOTTAYAM DISTRICT-686 507. 5 SUDHEESH RAJAPPAN, PLAVILA HOUSE, PALAMARA P.O, 26TH MILE, KANJIRAPPILLY, KOTTAYAM - 686 518. 6 UNITED INDIA INSURANCE COMPANY LIMITED, DAIVASAHAYAM BUILDING, K.K ROAD, PONKUNNAM-686506. R3 BY ADV. SRI. E.M.JOSEPH R6 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04.08.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.1959/2012 - 3 -

K.Vinod Chandran,J.

---------- M.A.C.A.No.1959 of 2012 ---------- Dated, this the 4th day of August, 2020

JUDGMENT

The deceased was travelling in an Omni van on 25.10.2009 when an accident occurred by reason of collision with a passenger bus. The negligence was found on the driver of the bus, which was covered by a valid insurance policy issued by the 3rd respondent. The appellants are the father, mother and two married sisters of the deceased. The Tribunal tried the claim with another claim, again of the legal heirs of one another deceased in the very same accident.

2. The learned Counsel for the appellants submits that the income was taken only at Rs.5000/- when the claim was of Rs.10000/-. The deceased was a Goldsmith and PW-1, the owner of the jewellery in which the deceased was

engaged as a permanent worker, was examined. PW-1 had deposed that he had been paying Rs.10000/- per month to the deceased. It is also contended that in adopting the future prospects 15% has to be paid since the deceased was a permanent worker. The multiplicand which was adopted by the MACA.1959/2012 - 4 - Tribunal was 9, while the deceased, who was 32 years, should have been fixed with a multiplicand of 16.

3. Looking at the evidence of PW-1 it cannot be

said that the same can be believed and that the income as asserted by the claimant has to be adopted. The Tribunal has noticed that even according to PW-1 he was employing six workers on the said salary, which itself would result in his spending Rs.60,000/- as salary per month. Nothing was produced to show that PW-1 was having income to that extent. In such circumstances, this Court does not find any

reason to believe PW-1 and fix a notional income as asserted by the claimants before the Tribunal. However, in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236], the Hon'ble

Supreme Court has found that a coolie is entitled to Rs.4,500/- per month. In such circumstances, the notional income can be fixed at Rs.7000/-. One-half of the income has to be set apart for his personal expenses, since he was a bachelor. For future prospects, 40% can be adopted, since the deceased was not a permanent salaried employee of age 32 years. Parents, appellants 1 and 2, are entitled to

compensation for filial consortium at

[(2009) 6 SCC 121 = (2010) 2 KLT 802 (SC)], the appellants 1 and 2 are also entitled to get loss of estate at Rs.15,000/-. The injured also had a period of hospitalisation of 12 days before death visited him and he is entitled to a higher amount for the pain and suffering.

4. Accordingly, the following modification is made to the award made by the Tribunal:

Sl Head of Claim Amount awarded by Total amou

(=4900)x12x16

2 Transport & expenses 2000

pain and sufferings 6 Compensation for 30000 Nil loss of love and affection

7 Loss of consortium Nil

5. The learned Counsel for the Insurance Company has a contention that the claim made by the appellants is far below the enhanced compensation granted by this Court. MACA.1959/2012 - 6 - The principle as enunciated in Rajesh v. Rajbir Singh [2013

(3) KLT 89 (SC)] is that when just compensation is awarded by the Court, it need not necessarily confine itself to the claim raised by the injured. It is also to be noticed that

over the years there have been modifications and enhancements made, by reason of the judgments of this Court and the Honble Supreme Court. The amounts

claimed under the various heads often is based on judgments as available at the time when the claim is filed.

6. The proportion as found by the Tribunal at the ratio of 40:40:10:10 is not applicable. The entire money has to be shared by the father and mother, the only dependant legal heirs of the deceased; the sisters being married are not dependants of the deceased.

7. Considering the fact that about ten years have

elapsed from the date of the accident, there is no requirement to deposit any amounts in fixed deposit. The payment as per the modification made herein shall be made within three months with interest as directed by the Tribunal @ 8%. The appellants 1 and 2 shall produce a copy of a cancelled cheque of the Bank account in a Nationalized Bank in any one of their names, with authorization from the other or in their joint/separate names and with copy of MACA.1959/2012 - 7 - AADHAAR or acceptable identification, before the Tribunal within one month, with copy to the Insurance Company. The Insurance Company shall credit the amounts through NEFT/RTGS mode to the said account/accounts within three months, failing which the appellants 1 and 2 can approach the Tribunal. The appeal is allowed as indicated above. There shall be no order as to costs. Sd/- K.VINOD CHANDRAN JUDGE Vku/-

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