

C.Radhamani vs the Branch Manager

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Court : Kerala

Decided On : Aug-30-2019

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appeal No. : MACA/585/2013

Appellant : C.Radhamani

Respondent : The Branch Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
FRIDAY, THE 30TH DAY OF AUGUST 2019 / 8TH BHADRA, 1941
MACA.No.585 OF 2013 AGAINST THE AWARD IN OP(MV)No.214/2011
DATED 30-07-2012 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,
WAYANAD, KALPETTA APPELLANTS/PETITIONERS: 1
C.RADHAMANI AGED 53 YEARS W/O.LATE KUNHANANDAN NAIR,
KOLAPPATTA HOUSE 2 AMBILI.K. AGED 28 YEARS D/O.LATE
KUNHANANDAN NAIR, KOLAPPATTA HOUSE 3 ANOOP KUMAR.K.
AGED 25 YEARS S/O.LATE KUNHANANDAN NAIR, KOLAPPATTA
HOUSE 4 HARITHA.K. AGED 22 YEARS D/O.LATE KUNHANANDAN
NAIR, KOLAPPATTA HOUSE BY ADV. SMT.CELINE JOSEPH

RESPONDENT/RESPONDENT NO.3: THE BRANCH MANAGER NATIONAL INSURANCE COMPANY LTD., KALPANA SHOPPING COMPLEX, MAIN ROAD,KALPETTA - 673 121. BY ADV. LAL GEORGE THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 30.08.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The claimants in a proceedings for compensation before the Motor Accidents Claims Tribunal have come up in this appeal challenging the inadequacy of the quantum of compensation granted by the Tribunal.

2. One Kunhanandan Nair, aged 59 years died on 27.11.2010 on account of injuries sustained by him in a motor

accident took place on 15.11.2010. It is stated in the claim petition that he was doing business. His wife and three children were the claimants in the proceedings. A sum of Rs.8,00,000/- was the claim made in the proceedings. As against the said claim, the Tribunal has granted to the claimants a sum of Rs.2,69,000/- by way of compensation. It is aggrieved by the inadequacy of the said compensation that the claimants have come up in this appeal.

3. Heard the learned counsel for the appellants and Sri. Lal George, the learned counsel for the respondent who appeared in this matter as directed by the Court.

4. Though it is stated in the claim petition that the

deceased was earning a sum of Rs.7,000/- per month, in the absence of supporting evidence, the Tribunal has reckoned the monthly income of the deceased only at Rs.3,000/- for the purpose of computing the compensation payable to the claimants for loss of dependency.

5. In the absence of any evidence in support of

the plea as regards the income of the deceased, in the light of the decisions of the Apex Court in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited, [(2011) 13 SCC 236] and Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd., [(2014) 2 SCC 735], where the Apex Court has reckoned the monthly income of similarly placed persons at Rs.4,500/- and Rs.6,500/- in the context of the accidents took place in the year 2004 and 2008 respectively, I am of the view that the monthly income of the

deceased in the instant case could have been certainly reckoned by the Tribunal at Rs.7,000/- itself in the context of the accident took place in 2010 as claimed in the proceedings. In the light of the decision of the Apex Court in National Insurance Company Ltd v. Pranay Sethi [2017(4) KLT 662 (SC)], as the dependants of the deceased were four in number, one fourth of the income has to be deducted towards personal expenses, and as the deceased was aged above 50 and below 60, 10% of the income reckoned has to be added towards

future prospects for arriving at the multiplicand while computing the compensation for loss of dependency. As the deceased was aged 59, the multiplier to be applied for the said purpose is '9'. If compensation for loss of dependency is arrived at on that basis, the same would come to Rs.6,23,700/- ($\text{Rs.}7000 \times 12 \times 3/4 \times 110/100 \times 9$). As the Tribunal has granted only a sum of Rs.2,43,000/- towards compensation under that head, the claimants would be entitled to an additional compensation of Rs.3,80,700/-.

6. It is trite that a conventional amount has to be

granted in all cases of death towards compensation for pain and suffering. As no amount has been granted by the Tribunal, I deem it appropriate in the facts and circumstances of the case to grant to the claimants Rs.20,000/- by way of compensation under that head.

7. In the light of the decision of the Apex Court in

Pranay Sethi, and having regard to the fact that the accident in the instant case is one that took place in the year 2010, I am of the view that the Tribunal should

have granted Rs.40,000/- to the wife of the deceased towards compensation for loss of consortium. Similarly, in the light of the said decision, the Tribunal should have granted to the claimants Rs.15,000/- towards compensation for loss of estate and Rs.15,000/- towards funeral expenses, totalling to Rs.70,000/-. The Tribunal has granted only a sum of Rs.15,000/- under those heads. The claimants are, therefore, entitled to a further sum of Rs.55,000/- under those heads.

8. Coming to the compensation for loss of love

and affection, in the light of the decision of the Apex Court in Magma General Insurance Co. Ltd. v. Nanu Ram and others (2018 ACJ 2782) and having regard to the fact that the accident in the instant case is one that took place in the year 2010, I am of the view that the children of the deceased are entitled to a sum of Rs.40,000/- each, totalling to Rs.1,20,000/-. As the claimants were granted only a sum of Rs.5,000/- under that head, they are entitled to a sum of Rs.1,15,000/- by way of additional compensation.

9. The compensation granted by the Tribunal under the remaining heads appear to be in order.

10. In short, the claimants are entitled to Rs.5,70,700/- by way of additional compensation. In the result, the appeal is allowed granting to the

claimants a sum of Rs.5,70,700/- by way of additional compensation. Needless to say, the claimants will be entitled to interest for the additional compensation at the rate of 7.5%. It is clarified that all other directions contained in the impugned award will stand. The parties will be at liberty to move the Tribunal for directions as regards deposit of the additional amount of compensation granted and for the disbursal thereof. All interlocutory applications in the appeal are closed. Sd/-
P.B.SURESH KUMAR, JUDGE DK