

Francis Vs. Sajeevan

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Court : Kerala

Decided On : Nov-26-2014

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

Appellant : Francis

Respondent : Sajeevan

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 WEDNESDAY, THE 26TH DAY OF NOVEMBER 2014 5TH AGRAHAYANA, 1936 MACA.No. 2271 of 2014 (D) ----- AGAINST THE AWARD IN OPMV15522009 of MACT, IRINJALAKUDA DATED 1305-2014 APPELLANTS/PETITIONERS: -----

1. FRANCIS, AGED 54 YEARS S/O.DEVASSY, CHIRIYANKANDATH HOUSE, ANTHIKKAD DESOM VILLAGE P.O, THRISSUR DISTRICT.

2. ANEES FRANCIS @ ALICE, AGED 46 YEARS W/O.FRANCIS, CHIRIYANKANDATH HOUSE, ANTHIKKAD DESOM VILLAGE P.O, THRISSUR DISTRICT.

3. PRINCE, AGED 26 YEARS S/O.FRANCIS, CHIRIYUANKANDATH HOUSE, ANTHIKKAD DESOM VILLAGE P.O, THRISSUR DISTRICT.

4. PRIYA, AGED 24 YEARS D/O. FRANCIS, CHIRIYUANKANDATH HOUSE, ANTHIKKAD DESOM VILLAGE P.O, THRISSUR DISTRICT. BY ADV. SRI.V.BINOY RAM RESPONDENTS/RESPONDENTS: ----- 1. SAJEEVAN PUTHUR HOUSE, "PRATHEEKSHA", KIZHUTHANI P.O THANISSERY, VIA IRINJALAKUDA.

2. SURESH BABU S/O.VISWAMBARAN, KUTTIKATT HOUSE, PERINGOTTUKARA P.O THRISSUR DISTRICT.

3. THE MANAGER NEW INDIA ASSURANCE CO.LTD, BRANCH OFFICE VELLANIKARAN BUILDING, MAIN ROAD, IRINJALAKUDA PIN680121. R3 BY ADV. SRI.P.JAYASANKAR R BY SRI.A.A.ZIYAD RAHMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 26/11/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- M.A.C.A No.2271 of 2014
----- Dated this the 26th day of November,
2014

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the applicant before the Tribunal complaining that the compensation awarded by the Tribunal is inadequate. The accident occurred on 22.08.2009 and the deceased, the daughter of appellants 1 and 2, along with her mother was walking through the Irinjalakuda Municipal Bus stand at about 8.20 a.m on that day, when a Stage Carriage bearing Reg. No.KL-8/T2917 driven by the 2nd respondent before the Tribunal hit her. As a result of which, she fell down and the left back wheel of the stage carriage ran over the body of deceased Ms.Jasmine. She suffered multiple fracture on the left hand and sustained other injuries which were fatal and she died on the same day.

2. We heard Sri Binoy Ram.V, the learned counsel for the appellant, and Sri P.Jayasankar the learned counsel for the M.A.C.A No.2271 of 2014-D2 Insurance

Company. The entire liability is covered by the policy.

3. The learned counsel for the appellant mainly contended that while calculating the loss of dependency, one half has been deducted towards personal expenses, which is not justified. It is submitted that the child was only aged 9 years at the time of the accident and she was studying in the IVth standard. In that view of the matter, reduction of any amount towards personal expenses cannot be justified. It is also submitted that a reasonable amount ought to have been fixed as notional income and Rs.2,000/- adopted is too low. It is also submitted that the amount towards funeral expenses and pain and suffering, loss of estate etc. are inadequate and no compensation has been granted towards loss of love and affection.

4. The learned counsel Sri P.Jayasankar submitted that the compensation awarded is just and fair.

5. The learned counsel for the appellant relied upon the judgment of the Apex Court in Kishan Gopal v. Lala [2013 ACJ2594 to invite our attention to the principles which we will have to adopt for awarding compensation consequent to the death of children below the age of 15. Therein the deceased was a boy M.A.C.A No.2271 of 2014-D3aged 10, who was assisting his father in his agricultural work. The notional annual income was taken as Rs.30,000/- and 15 was adopted as the multiplier.

6. We find from para.18 of the judgment that the apex court relied upon an earlier judgment in Lata Wadhwa v. State of Bihar [2001 ACJ 1735 SC]) to adopt the multiplicand and the multiplier. It was held in para.18 of the said judgment as follows:

18. In our considered view, the aforesaid legal principle laid down in Lata Wadhwa's case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that deceased was 10 years old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning

member prior to the date of accident was fixed at Rs.15,000. Further, the deceased boy, had he been alive, would have certainly contributed substantially to the family of the appellants by working hard. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000 and further taking the young age of the parents, namely the mother who was about 36 years old at the time of accident, by applying the legal principles laid down in the case of Sarla Verma v. Delhi Transport Corporation, 2009 ACJ1298(Supreme Court), the multiplier of 15 can be applied to the multiplicand." M.A.C.A No.2271 of 2014-D4Therefore importance should be given to various aspects including that rupee value has come down drastically from the year 1994 and we will have to consider the fact that the deceased would have certainly contributed substantially to the family.

7. Herein the child was aged 9 and it will be only reasonable to take Rs.2,500/- as the notional income and we also vacate the direction to deduct the half from the total compensation allowable towards loss of dependency. The Tribunal has only awarded Rs.10,000/- towards funeral expenses and nothing has been awarded towards loss of love and affection. But the learned counsel Sri P.Jayasankar pointed out that towards loss of expectation of life Rs.35,000/- has been granted and another amount of Rs.25,000/- has also been granted towards compensation for shock and anxiety.

8. In the light of the various contentions raised by the learned counsel on both sides, we refix the compensation as follows: Sl.No. Heads of claim Amt. 1 Funeral expenses Rs. 25,000.00 2 Transportation expenses Rs. 3,500.00 M.A.C.A No.2271 of 2014-D5Sl.No. Heads of claim Amt. 3 Damage to clothings Rs. 500.00 4 Pain and suffering Rs. 10,000.00 5 Loss of dependency (2,500X12X15) Rs. 4,50,000.00 6 Loss of estate Rs. 15,000.00 7 Loss of expectation of life Rs. 50,000.00 Loss of love and affection and compensation Rs. 1,00,000.00 8 for shock and anxiety TOTAL Rs. 6,54,000.00 (Rupees Six lakhs fifty four thousand only) We notice that the claimant has limited the claim to Rs.4 lakhs and therefore the claimants will have to pay court fee on the amount awarded by this Court. The Tribunal will disburse the total amount in tune with the directions already issued and in terms of the ratio fixed therein and we also hold that the amount will carry

interest @ 9% per annum from the date of petition till realisation. The appeal is accordingly allowed. No costs. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S to Judge

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