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Jisha K.P. Vs. Sajeevan

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SooperKanoon Citation : sooperkanoon.com/39212

Court : Kerala

Decided On : Feb-02-2015

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

Appellant : Jisha K.P.

Respondent : Sajeevan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY, THE2D DAY OF FEBRUARY201513TH MAGHA, 1936 MACA.No. 2640 of 2010 ( ) ---------- AGAINST THE AWARD IN OPMV9062006 of M.A.C.T., MANJERI APPELLANTS/PETITIONERS: ---------- 1. JISHA.K.P., AGED33YEARS, W/O.LATE P.M.VINOD KUMAR.

2. SAROJINI AMMA, AGED54YEARS, W/O.LATE GOPALAKRISHNAN NAIR3 MINOR ARYA KRISHNAN, AGED11YEARS, D/O.LATE P.M.VINOD KUMAR4 MINOR GOPU KRISHNAN, AGED6YEARS, D/O.LATE P.M.VINOD KUMAR, APPELLANTS3AND4ARE REP.BY HER NEXT FRIEND AND MOTHER JISHA.K.P. (ALL ARE R/AT PADINJARE MATHANCHERI HOUSE VALLIKUNNU.P.O., THIRURANGADI TALUK, MALAPPURAM DISTRICT BY ADV. SRI.R.SUDHISH RESPONDENTS/RESPONDENTS: ---------- 1. SAJEEVAN, S/O.RAGHAVAN,

VADAKKEL HOUSE, PARASSINIKADAVU.P.O., KANNUR DISTRICT-670 563.

2. SATHEESHAN, S/O.RAGHAVAN, VADAKKEL HOUSE PARASSINIKADAVU.P.O., KANNUR DISTRICT-670 563.

3. NATIONAL INSURANCE COMPANY LTD., DIVISIONAL OFFICE, P.B.NO.40, BANK ROAD KANNUR-670 001. R1-2 BY ADV. SRI.SUNIL NAIR PALAKKAT R1-2 BY ADV. SRI.K.N.ABHILASH R3 BY ADV. SRI.LAL GEORGE THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON0202-2015, ALONG WITH MACA. 1653/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

- M.A.C.A.Nos.1653 & 2640 OF2010- Dated this the 2nd day of February, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals are respectively filed by the claimants as well as the Insurance Company. The claimants have approached this Court for enhancement of the compensation, whereas the Insurance Company seeks recovery from the owner and driver of the vehicle. As far as the appeal filed by the Insurance Company namely M.A.C.A.No.1653/2010 is concerned, we notice that in the light of the judgment of the Full Bench of this Court in National Insurance Co. Ltd. v. Jisha (2015(1) KLT1F.B.), the appeal will have to be dismissed. The Full Bench decision was rendered in these two appeals along with some other appeals referred for consideration of the legal position as to whether the absence of a badge by the driver of a transport vehicle is sufficient to exonerate the insurance company from the liability to pay compensation to the claimant or atleast whether the MACA Nos.1653 & 2640 of 2010 2 insurance company is entitled to the right to recover the compensation paid by them to the claimant from the owner. The Full Bench answered the reference against the Insurance Company. Therefore, we find no merit in the appeal M.A.C.A.No.1653/2010 filed by the Insurance Company.

2. As far as M.A.C.A.No.2640/2010 is concerned, the learned counsel for the appellants submitted that the Tribunal even though accepted the employment and salary of the deceased, proper compensation has not been awarded. The claimants are the widow, two minor children and the mother of deceased Sri.P.M.Vinod Kumar. The accident occurred while he was travelling in a lorry bearing Reg.No.KL01X9354from Town AR Camp to Malappuram SP Camp for bringing barricades. The vehicle stopped for bringing water at a place called Siyamkandam, Pulikkal. While the deceased was getting down from the lorry, the offending vehicle namely an ambassador car bearing Reg.No.KL13J1950knocked him down. He succumbed to the injuries on the same day. He was aged 38 at the time of the accident. MACA Nos.1653 & 2640 of 2010 3 3. The deceased was employed as a Camp follower in the MSP Camp, Malappuram. Ext.A6 is his salary certificate which shows a gross salary of ` 7310/-. The multiplier adopted is 15. But the Tribunal while fixing the multiplier and multiplicand, adopted the multiplier as 7 upto the age of 55 and thereafter as 5 on the notional income of `15,000/- per annum. As rightly pointed out by the learned counsel for the appellants, there is no justification for adopting the said method. Since the age is 38, the multiplier will be spread over only upto the age of 53. 15 will have to adopted uniformly as the multiplier for the same multiplicand. Even though the learned counsel for the Insurance Company submits that the employment of the deceased is only provisional, we cannot agree with the said argument. The contention is that the deceased was employed through employment exchange. As far as the said employment is concerned, regular employment is through employment exchange and he was appointed as Camp follower accordingly.

4. Since the deceased was aged 38 at the time of the accident, MACA Nos.1653 & 2640 of 2010 4 50% will have to be added towards future increase in salary.. Therefore the monthly income will be `10965/-, out of which < will have to be deducted for personal expenses of the deceased. Therefore, the total dependency compensation will be `14,80,275/- (10965 x 12 x 15 x >). The Tribunal has awarded only `5,000/- for loss of consortium which we enhance to ` 1,00,000/- in the light of the judgment of the Apex Court in Rajesh v.Rajbir Singh (2013 (3) KLT89(SC); for loss of love and affection we enhance the amount to `1,00,000/- and for funeral expenses, `2,000/- is granted which we enhance to `25,000/-. As

far as loss of estate, only a sum of `2,000/- is granted. We award a sum of `25,000/- towards loss of estate. Accordingly, the compensation is refixed in the following manner : Head of claim Amount Awarded in rupees Loss of dependency 1480275 Loss of love and affection 100000 Loss of consortium 100000 Loss of estate 25000 Funeral expenses 25000 Transporation 1000 MACA Nos.1653 & 2640 of 2010 5 Head of claim Amount Awarded in rupees Pain and suffering 5000 Total 1736275 5. The appellants will be entitled to interest @ 9% per annum for the enhanced compensation. The amount will be shared in the ratio as already prescribed by the Tribunal in the award. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. M.A.C.A.No.1653/2010 is thus dismissed and M.A.C.A.No. 2640/2010 is allowed. T.R.RAMACHANDRAN NAIR, JUDGE P.V.ASHA, JUDGE sv. MACA Nos.1653 & 2640 of 2010 6

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