

Subramanian Vs. N.D.Anthappan

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Court : Kerala

Decided On : Mar-05-2015

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

Appellant : Subramanian

Respondent : N.D.Anthappan

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 THURSDAY, THE 5TH DAY OF MARCH 2015 14TH PHALGUNA, 1936 MACA.No. 1983 of 2013 ()

----- AGAINST THE AWARD IN OPMV19542011 of MACT, THRISSUR DATED 0305-2013 APPELLANTS/PETITIONERS:

----- 1. SUBRAMANIAN S/O.AZHAKIRISWAMI, ENNAMANATH HOUSE, KAIPULLY ARIMBOOR PO, THRISSUR DISTRICT.

2. LEELAMANI W/O.SUBRAMANIAN, DO. DO.

3. JIJI D/O.SUBRAMANIAN, DO. DO. BY ADV. SRI.P.V.CHANDRA MOHAN
RESPONDENTS/RESPONDENTS: ----- 1. N.D.ANTHAPPAN S/O.DEVASSY, NETTISSERY HOUSE, PO VATANAPPILLY THRISSUR DISTRICT 680614 2. FRANCIS.K.J S/O.JOHNSON.K.V, KUNNAMKULATH HOUSE, PO KANJANY THRISSUR DISTRICT 680612.

3. CHOLAMANDALAM MS GENERAL INSURANCE CO.LTD., IIND FLOOR CITY ARCADE COMPLEX, GURUVAYOOR ROAD, POONKUNNAM PO THRISSUR 680003. R3 BY ADV. SRI.MATHEWS JACOB (SR.) R3 BY ADV. SRI.P.JACOB MATHEW THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 0503-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

----- M.A.C.A.No.1983 OF 2013-----
----- Dated this the 5th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants before the Tribunal, aggrieved by the inadequacy of the amount awarded. The appellants are the parents and sister of deceased Sri.Limesh. All of them were depending on him. The deceased was driving an auto rickshaw of his own bearing Reg.No.KL-8/AN7758 through public road in front of the Mother Hospital at Olari, Thrissur. The bus bearing Reg.No.KL/U6628 which came from the opposite direction hit the autorickshaw and he sustained severe injuries and the auto rickshaw was also damaged. Amounts were claimed for the damage caused to the autorickshaw also.

2. The learned counsel for the appellants submits that the deceased was getting income from the autorickshaw. He was also conducting business in stationery items and evidence was let in to prove the various aspects to show that he was having monthly income MACA No.1983/2013 2 of `12,000/-. Oral evidence was also given in the matter and the Tribunal has fixed the same only at `5,000/-. As regards funeral expenses, `5,000/- alone has been granted and towards loss of estate, `5,000/- has been granted. It is also submitted that the amount of `30,000/- granted towards loss of love and affection is also not correctly fixed.

3. The learned Senior counsel for the Insurance Company submits that proper compensation has been fixed.

4. As regards the monthly income of the deceased, it is seen from the evidence that he was aged 24 at the time of the accident and evidence was given to show that he was remitting amounts towards chitties. Exts.A20 and A10 passbooks of Kuri companies were produced. The Tribunal observed that PW1 could not account for the sources of the income when cross examined. PW1 is the appellant No.1. It is also stated that there is no proper seal and signature in the documents. As regards the conduct of the shop, it is stated that there was no licence from the Panchayath. PW2 is the Deputy Chairman of another kuri namely Rolland Kuri, who admitted that deceased Limesh MACA No.1983/2013 3 was a subscriber in his company and he identified Ext.A20 pass book. For recovering defaulted instalments, he filed a suit and Ext.A24 produced is the Kuri statement. As per the findings of the Tribunal, statement of accounts have not been properly proved. PW3 is the Manager of another kuri known as New Millaneum Kuri Company, who deposed that he was a subscriber to three chitties of Nos. 1505, 1506 and 1507. Ext.A10 is the passbook showing the remittances. `500/- each was being remitted. PW4 is the Branch Manager of Indus Bank, who deposed that the deceased had availed loan from his bank. Ext.A11 is produced to prove the same. Ext.A26 is the copy of the statement issued by the bank. The Tribunal finally concluded that he was having income from other sources. He was driving his own authorickshw also.

5. The learned Senior Counsel for the Insurance Company submits that licence of the deceased was not produced in spite of the petition filed before the Tribunal. Therefore it cannot be safe to reckon the income by treating him as a driver cum owner of the autorickshaw.

6. Having regard to the evidence adduced and the year of the MACA No.1983/2013 4 accident being 2010, even if the licence is not produced, he being the registered owner of the autorickshaw, he would have been getting income from the business. After considering various aspects, we are of the view that it will be proper to fix the monthly income at `7,500/-. The Tribunal has deducted 1/3 towards personal expenses and the balance is treated as contribution. Going by the judgment in Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT802(SC), 50% will have to be deducted since he was a bachelor. Therefore the dependency compensation will be `8,10,000/- (7500 x 12 x 18 x 50%). We

further award `1,00,000/- towards loss of love and affection and `25,000/- towards funeral expenses. `35,000/- is awarded towards loss of estate.

7. Accordingly, the appellants will be entitled for compensation in the following manner : Head of claim Amount Awarded in rupees Medical expenses 8675 Funeral expenses 25000 Transportation 3000 Pain and suffering 10000 MACA No.1983/2013 5 Head of claim Amount Awarded in rupees Loss of dependency 810000 Loss of estate 35000 Loss of love and affection 100000 Total 991675 8. In addition to the above, the appellants will be entitled to a sum of `35,000/- towards damages to autorickshaw, as already granted by the Tribunal. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The amount will be shared in the ratio as prescribed by the Tribunal in the award. The Insurance Company will 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. The appeal is accordingly allowed. T.R.RAMACHANDRAN NAIR, JUDGE P.V.ASHA, JUDGE sv.

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