

A.E. George Vs. Suseelan and ors.

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Court : Kerala

Decided On : Dec-07-1988

Reported in : II(1989)ACC174

Judge : V. Sivaraman Nair and; M. Fathima Beevi, JJ.

Appellant : A.E. George

Respondent : Suseelan and ors.

Advocate for Def. : Sri. Mathew Jacob

Judgement :

V. Sivaraman Nair, J.

1. The claimants in O.P. (M.V) Nos. 90 and 91 of 1982 are the appellants in these two appeals filed under Section 110D of the Motor Vehicles Act. Sri Damodaran, whose legal representatives had filed the latter application, was riding a bicycle. The claimant in the former application was riding on the carrier. While in the national high way infront of the Pulayar Maha Sabha Building at Eramallur, at about 8 PM. on 22-1-1977, a passenger car bearing registration number KLF 9226, hit the bicycle. Both the persons were thrown on the road. Sri Damodaran, the rider of the bicycle, was run over by the car. He died on the spot. The other person sustained injuries. He was removed to the General Hospital where he was under treatment from 22-1-1977 to 10-4-1977. The parents, the widow and children

of the deceased filed O.P. (M.V.) No. 91 of 1982 whereas the injured filed O.P (M.V.) No. 90 of 1982 under Section 110A of the Motor Vehicles Act. The claims were for rupees one lakh for the injured and Rs. 1,40,500/- in respect of the deceased. The widow of the deceased, the injured and two others were examined on behalf of the claimants. They also produced and marked seven documents. One of such documents was Ext. A6 medical certificate-cum-report issued by the Orthopaedic Surgeon of the General Hospital. There was a statement in that certificate to the effect that at the time of the admission of the injured in the General Hospital as an inpatient it was stated that he was a coolie earning Rs. 5/- per day, PW 1, the widow of the deceased, claimed that her husband was earning Rs. 500/- per mensem on daily wages. The injured, when examined as PW 3 claimed that he was receiving Rs. 15/- per day and that he was earning Rs. 450/- per month. There was no cross-examination in relation to the monthly earnings of either of the two persons as spoken to by those two witnesses.

2. The Tribunal, however, found that the income of the injured i.e. the appellant in M.F.A. 673/83 and claimant in O.P. (M.V) 90/82 was only Rs. 5/- per day for the reason that there was such a statement in Ext. A6 medical certificate-cum-report. He found further that both of them were admittedly coolies and both of them were proceeding at the time of the accident to collect their wages. The Tribunal, therefore, assumed that the wages of the deceased and the injured were Rs. 150/- per month. It was on that basis that the Tribunal worked out the compensation. Though the aggregate of the various items of compensation was Rs. 25,7571/- only an amount of Rs. 20,800/- was awarded to the injured and Rs. 31,000/- was awarded to the legal representatives of the deceased.

3. Even though the appellants have raised questions relating to the quantum of compensation under various heads, counsel for the appellants confined his arguments only to the finding relating to the monthly wages. According to him, the unchallenged testimony of PWs 1 and 3 indicated that the monthly income of the injured and the deceased was at least Rs. 450/-. The appellants seek enhancement of the quantum of compensation under this head.

4. Sri Mathew Jacob, Counsel for the respondent insurer in both these cases submitted that excepting for Ext. A 6 there was no other document on the basis of which the daily wages or the monthly earnings of the deceased and the injured could have been ascertained. He submitted further that the acceptance of that amount as daily income of the injured as applicable to his colleagues along with who he was proceeding at the time of the accident to collect the wages cannot be considered as improper or unsustainable.

5. We find considerable force in the submission urged before us by Sri. P.C. Iype, Counsel appearing for the claimants that the evidence 1st in on behalf of the claimants relating to the quantum of wages received by the injured and the deceased was not subjected to any cross-examination at all. He submitted further, and according to us rightly, that the mention of Rs. 5/- as the daily wages of the injured in the hospital records should not have been taken as conclusive of his daily or monthly earnings. We are, therefore, of the opinion that the Tribunal erred in adopting Rs. 150/- as the monthly income of the deceased and the injured for the purpose of quantifying the compensation.

6. At the same time, we are not persuaded to accept the submission of the counsel that the injured and the deceased must have been employed every day of the month and every month of the year. Award as we are of the employment position in our country, we would rather assume that the monthly income of the persons concerned in 1977 should reasonably be determined as Rs. 200/- and the compensation has to be worked out on that basis.

7. O.P. (M.V.) 91 of 1982, the Tribunal made a deduction of 1/3rd of the amount of wages toward the personal expenses of the deceased. We will adopt the same proportion as just and proper. There will, therefore, be a deduction of 1/3rd of the annual income of Rs. 2400/- appellants have no case that the multiplier adopted by the Tribunal in the case of the deceased is either too low or insignificant. Therefore the quantum has to be worked out by applying the multiplier of 20. That will work out to an amount of Rs. 32,000/-. 1/6th of the same has to be deducted in view of accelerated payment and uncertainties of life as found by the Tribunal. The balance will come to Rs. 26,667/-. The award of Rs. 5000/- for loss of consortium

and a further amount of Rs. 5000/- towards compensation for loss of expectations of life would also be retained. The total amount of compensation will, therefore, be Rs. 36,667/- in the case of the deceased in M.F.A. No. 691 of 1983 (O.P. (M.V) 91/82) we round it off to Rs. 36,700/-.

8. As far as the injured is concerned, the extent of disability as found by the Tribunal is not disputed. The annual loss of earning power has, therefore, to be worked out as Rs. 240/- instead of Rs. 180/-. The claimant does not object to the above proportion being adopted. The amount of compensation by applying the multiplier of 40 works out to Rs. 9,600/- instead of Rs. 7200/-. There will, therefore, be an addition of Rs. 2400/-. The actual loss of earnings during the period of treatment has also to be worked out on this basis and that will come to an amount of Rs. 1,200/- instead of Rs. 900/- awarded by the Tribunal. The Tribunal has awarded a further amount of Rs. 17,657/- as compensation under various other heads, viz. medical expenses (Rs. 1057) traveling expenses (Rs. 100) expenses for special diet (Rs. 500) compensation for pain and suffering and loss of amenities of life (Rs. 8000) and compensation for shortened expectation of life (Rs. 8000). The above amounts awarded by the Tribunal would be retained. The total amount of compensation will, therefore, be Rs. 28,457/-. It is founded to Rs. 28,500/-.

9. We are also of the opinion that the rate of interest which was determined by the Tribunal in both the cases as 6% per annum has to be enhanced to 9% per annum from the date of the application to the date of realization. We do so.

10. Counsel for the insurer submits that the amounts awarded were deposited and had been received by the claimants. The balance amount of compensation as awarded along with interest at the enhanced rate, and the difference in interest on the amounts already deposited, will be deposited by the respondent insurer within a period not exceeding two months from today.

11. The appeals are allowed as above. The parties will suffer their respective costs.

12. Issue carbon copy of this judgment to counsel on both sides on usual terms.

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