

P.V. Ammini Amma Vs. Bharathan and ors.

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Court : Kerala

Decided On : Sep-10-1991

Reported in : I(1992)ACC88; 1992ACJ630

Judge : K.P. Radhakrishna Menon and; T.V. Ramakrishnan, JJ.

Appeal No. : M.F.A. No. 315 of 1985

Appellant : P.V. Ammini Amma

Respondent : Bharathan and ors.

Advocate for Def. : S. Parameswaran,; M.R. Parameswaran and; P.V. Mohanan

Advocate for Pet/Ap. : E.V. Nayanar, Adv.

Disposition : Appeal allowed

Judgement :

K.P. Ramakrishnan, J.

1. Harichandran, son of the appellant, sustained fatal injuries in a bus accident on 1.4.1980. The ill-fated bus was driven by the 1st respondent and owned by the 2nd respondent. 4th respondent is alleged to be registered owner of the bus who was impleaded in the proceedings later while the matter was pending before the Tribunal. 3rd respondent is the insurer. In the appeal, the appellant has claimed enhancement of the compensation awarded by the Tribunal. She has also claimed enhancement of the rate of interest from 6 per cent to 12 per cent per annum.

2. The facts which are not in dispute and relevant can be summarised thus: Deceased Harichandran was a passenger in the bus involved in the accident. The bus while being driven by the first respondent fell into a paddy field and the deceased as well various other passengers sustained injuries as a result of the accident. Deceased suffered serious brain injuries. He was immediately taken to the Government Hospital, Kannur and from there to Medical College Hospital, Kozhikode. A brain surgery was conducted at the Medical College Hospital. He was an inpatient in the Medical College Hospital for 98 days and was discharged on 9.7.1980. Even after the surgery and treatment for 98 days, the doctors found themselves helpless to improve the condition of the deceased and the relatives were advised to take him for continued nursing. He was in a state of coma throughout the period of treatment and continued to be so even on the date of discharge. Exh. A-1 certificate established the fact that the deceased was an inpatient in the Medical College Hospital, Kozhikode for 98 days and had undergone a brain surgery. After the discharge from the Medical College Hospital he was taken to a private nursing home in Cherukunnu. His condition continued to be critical until he succumbed to his injuries on 14.7.1980. Exh. A-2 is the certificate of death. Exh. X-2 is the case-sheet proved by PW 4, the doctor attached to the private nursing home.

3. Appellant claimed that the deceased was at the time of accident aged 23 years and was working as a conductor in a bus getting about Rs. 25/- per day. Exh. A-3 is the certificate issued by the employer of the deceased. PW 2 is the son of the employer of the deceased who has produced Exh. A-3, the certificate. He has stated that the deceased was employed as a temporary conductor in a bus belonging to his mother from October, 1979 to 31st May, 1980 and that he was being paid a daily batta of Rs. 18.75 and was getting 15 days' work in a month. The appellant claimed a total amount of Rs. 78,000/- as compensation for the loss of dependency. Further an amount of Rs. 10,000/- was claimed as compensation for pain, suffering and mental shock. As loss of earning from 1.4.1980 to 14.7.1980 she claimed a total amount of Rs. 1,868.75. Towards transportation charges to the hospital an amount of Rs. 300/- was claimed. Rs. 10,000/- was claimed as expenses for treating at Medical College Hospital and St. Martins Hospital, Cherukunnu.

4. The Tribunal found that the 1st respondent driver was negligent and that was the reason for the accident in which the deceased sustained serious brain injuries. On the basis of the above finding, the Tribunal held that the owner and driver of the vehicle as well as the insurance company are jointly and severally liable for the compensation payable to the appellant.

5. The Tribunal fixed the total compensation payable at Rs. 10,680/- as against the total claim of Rs. 1,00,000/-. The total pecuniary loss was arrived at on the basis that the deceased was having work for 15 days in a month as a temporary conductor and was getting a daily batta of Rs. 18.75. Thus the total monthly income was fixed at Rs. 281.25. One-half of the said amount was treated as the contribution which the deceased would have paid to the appellant. Thus Rs. 140/- was taken as the pecuniary benefit which the mother would have derived per month from the deceased if he had continued to live. The ages of the deceased and the appellant, found by the Tribunal, were 24 and 56 respectively. Multiplier was fixed as 6. Thus the Tribunal worked out the total pecuniary loss at Rs. 10,680/-. The claim for pain, suffering and mental shock was totally disallowed on the ground that immediately after the accident the deceased became unconscious and continued to be in a state of coma till his death, 103 days after the date of accident. The amount of Rs. 300/- claimed as transportation charges was found to be reasonable. The Tribunal found that towards the cost of attendance to take care of the sinking person, the appellant would have spent an amount of Rs. 2,040/-. Taking note of the costs of conveyance used and the cost of medicines which may have been purchased from outside and the incidental expenses in connection with the treatment, Rs. 3,000/- was found to be just and reasonable to cover all such expenses. The Claims Tribunal relying upon the admission of the appellant examined as PW 1 found that she has received an amount of Rs. 3,000/- from the owner and that the said amount of Rs. 3,000/- received by the appellant is liable to be set off towards the amount of Rs. 3,000/- found payable as expenses for medical treatment, cost of attendance and transportation charges to the hospital. Thus even though the Tribunal has actually found an amount of Rs. 10,680/- as compensation payable, in the operative portion of the award, the Tribunal fixed only Rs. 10,380/- as compensation payable probably on the basis of an inadvertent error. The Tribunal granted interest on the amount found due at the rate of 6 per cent per annum.

6. Taking note of the fact that the deceased was only 24 years of age and was working as a temporary conductor earning an amount of Rs. 18.75 as daily batta, we feel that the Tribunal was not justified in arriving at the total pecuniary loss on the basis of the actual amount of daily batta which the deceased was receiving out of his employment at the time of the accident. As the deceased was a youngman employed already as a conductor on temporary basis, one could reasonably expect the deceased to be employed as a conductor on a permanent basis and could expect reasonable increase in his income within a reasonable period. Of course, it may also be probable that he may get married and may have to provide for his own family as he becomes older. Taking note of such reasonable probabilities which may have a positive and negative effect on the contribution which the deceased would have made to his mother, the appellant, we would fix Rs. 250/- per month as a reasonable amount which the deceased would have spent for the maintenance of his mother who was dependent on him. The multiplier adopted also, according to us, is too low. The normal life span of an individual adopted by the Supreme Court as well as this court in such cases is 70. Accordingly, we adopt 12 as the multiplier. Thus worked out, the total amount of the pecuniary loss would come to Rs. 36,000/-. Since we

have taken the multiplier only as 12, we do not think it necessary to make a further deduction towards lump sum payment. Accordingly the total amount payable towards pecuniary loss suffered by the appellant on account of the death of her son is fixed at Rs. 36,000/-. We do not find any justification to sustain the finding that the appellant is not entitled to any amount towards pain and suffering. The deceased would have certainly suffered serious mental shock at the time of the accident. Merely because as a result of the injury he has sustained in the accident he became unconscious and continued to be so is no reason to deny compensation towards mental shock, pain and suffering suffered by the deceased as an item of loss to the estate of the deceased. Even in the case of an instantaneous death, the Supreme Court as well as this court has in a number of cases granted reasonable amount as compensation for pain and suffering suffered by the deceased. Taking note of the fact that the deceased has suffered in the accident serious brain injury and continued to be in a state of unconsciousness for a period of 103 days, we find that the amount of Rs. 10,000/- is only very reasonable amount. We accordingly award Rs. 10,000/- as compensation towards pain, suffering and mental shock suffered by the deceased. In the light of the admissions made by the appellant as PW 1, we do not want to interfere with the determination of the compensation payable towards medical expenses including the transportation charges to the hospital and its adjustment as against the sum of Rs. 3,000/- admitted to have been paid by the owner of the vehicle. Since the rate of interest usually granted in similar cases by the Supreme Court and this court is 12 per cent per annum, we modify and fix the rate of interest at 12 per cent per annum. Accordingly, we modify the award by fixing the total compensation payable to the appellant at Rs. 46,000/- and rate of interest at 12 per cent per annum from the date of the petition till the date of payment with proportionate costs. The other conditions of the award would, however, stand.

7. Miscellaneous First Appeal is disposed of accordingly. The parties will bear their respective costs in the appeal.

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