

Anthonyamma and ors. Vs. the Managing Director, Ksrtc and ors.

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Court : Kerala

Decided On : Jul-01-2008

Reported in : 2008(3)KLJ507

Judge : J.B. Koshy and; ; P.N. Ravindran, JJ.

Acts : Motor Vehicles Act - Sections 163A and 166

Appeal No. : MFA No. 134 of 2003

Appellant : Anthonyamma and ors.

Respondent : The Managing Director, Ksrtc and ors.

Advocate for Def. : Johnson P. John (SC), Adv.

Advocate for Pet/Ap. : P.C. Haridas, Adv.

Judgement :

J.B. Koshy, J.

1. A 7 year old child died in a motor accident. Father and mother of the child approached the Motor Accidents Claims Tribunal, Pala for compensation. Even though Tribunal found that the accident occurred due to the negligent driving of the 2nd respondent, driver of the vehicle owned by the 1st respondent, against a claim of Rs. 3,20,000/- only an amount of Rs. 74,600/- was allowed. The dispute is

regarding the quantum of compensation. It is contended that the child was a student. If compensation was awarded under Section 163A even without proving the negligence of the driver, the claimant will be entitled to a compensation of Rupees Two Lakhs. Based upon the Division Bench decision of this Court in National Insurance Co. Ltd. v. Muneer : 2003(1)KLT137 it was argued that quantum of compensation awarded under Section 166 of the Motor Vehicles Act (in short 'the M.V. Act') can never Section 163-A of M.V. Act because in claims under Section 163-A, negligence of the driver of the offending vehicle need not be proved. Therefore, it was argued that compensation that should be awarded when negligence proved should be higher. We can award compensation only on the basis of settled legal principles of the Hon'ble Supreme Court and the formula fixed under Section 163-A of the M.V. Act can be taken only as a guideline while assessing compensation under Section.

2. Claims under Sections 166 and 163-A are totally independent. Under Section 163-A, if age and income at the time of the accident is determined, the compensation is fixed in the case of fatal accidents as mentioned in the second schedule. If there is only permanent disability, taking the multiplier fixed for the age group, income of the deceased and percentage of permanent disability, compensation can be calculated taking second schedule as a ready reckoner. In case of non-earning persons Rs. 15,000/= is fixed as national income. See Deepal Girishai Soni and Ors. v. United India Insurance Co. Ltd. 2004 ACJ 934. But, when claims are filed under Section 166, entire matter including effect in further prospects etc. have to be considered by the Tribunal for granting compensation. It was further argued that in Lata Wadhwa and Ors. v. State of Bihar and Ors. : (2001)IILLJ 1559 SC , the Hon'ble Supreme Court has awarded Rs. 1,50,000/ = as compensation apart from the general damages of Rs. 50,000/= for children aged between 5 and 10 years. For children aged between 10 to 15 years, compensation has to be calculated taking annual contribution as Rs. 24,000/- and a multiplier of 15, apart from the general damages of Rs. 50,000/-. The counsel also referred to the decision of the Hon'ble Supreme Court in M.S. Grewal and Anr. v. Deep Chand Sood and Ors. (2001) 5 SCC 151 wherein it was held that multiplier method as adopted in motor accident claims cases can be applied in similar claims as was held in Lata Wadhwa's case (supra) and Rs. 5,00,000/- awarded to the

parents of deceased school student was not interfered by the Supreme Court.

3. It is settled law that 2nd schedule can be taken for guidance for awarding compensation. A three member bench of the Supreme Court in Smt. Supe Dei and Ors. v. National Insurance Co. Ltd. and Anr. JT 2002 (Suppl. 1)SC 451, held that though the second schedule of the Motor Vehicle Act is framed for the purpose of awarding compensation under Section 163-A, it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act also. In Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Anr. : [2003]1SCR1229 , it was held that structured formula mentioned in the second schedule gives guidelines for determination of the amount of compensation in terms of Section 166 of the Motor Vehicles Act also. In A.P.S.R.T.C. v. M. Pentaiah Chary (2007) AIR SCW 5689, the Hon'ble Supreme Court has held that except in exceptional circumstances, second schedule should be followed in awarding compensation.

4. The incident occurred on 22.6.1995. Under the 2nd schedule, notional income of a non earning person is fixed as Rs. 15,000/- per year and after deducting one third, Rs. 10,000/- can be taken for calculation of compensation. In this fatal accident case, the motor accident victim is an infant. Father was aged 50 years at the time of the accident and mother was aged 45 years. If age of the motor accident victim is considered, 15 is the apt multiplier as per the second schedule. But, since mother was 45 years, 13 is the apt multiplier. When an unmarried person dies, age of the claimants has to be looked into in a petition filed under Section 166. Death of a child cannot be compensated in pecuniary terms. Even if the child is mentally or physically impaired, it will cause deep grief in the parents. It is all the more same when a brilliant child goes to the school and parents have to find the body of the child in a damaged condition due to an accident not due to the fault of the child or parents. Its physical and mental impact cannot be described in words. Even though loss of care to the child cannot be measured in terms of money to award compensation, some yardstick should be followed. It is needless to say that even compensation cannot be calculated on the formula adopted by Legislature while awarding compensation. It is contended that immediately after passing of the award, father died due to the shock of the death of his child. We are

not considering that aspect in this appeal.

5. We are of the opinion that tribunal ought to have granted compensation at least fixing 13 as the apt multiplier and thus the compensation payable will be Rs. 1,30,000/-. The Tribunal has awarded only Rs. 80,000/- should be deposited by the 1st respondent owner of the bus with 7.5% interest from the date of application till the date of deposit over and above the decreed amount by the Tribunal. On deposit of the above amount, the 1st appellant/mother is allowed to withdraw the same.

The appeal is partly allowed.

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