Fathima and ors. Vs. Sulaikabi and ors.

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Court : Kerala

Decided On : May-31-2007

Reported in : 2007ACJ2515; 2007(2)KLJ682

Judge : J.B. Koshy and; K.P. Balachandran, JJ.

Acts : Motor Vehicles Act - Sections 163A and 166

Appeal No. : M.F.A. No. 628 of 2000

Appellant : Fathima and ors.

Respondent : Sulaikabi and ors.

Advocate for Def. : K.K.M. Sherif, Adv.

Advocate for Pet/Ap. : P.V. Chandra Mohan, Adv.

Judgement :

J.B. Koshy, J.

1. The appellants filed a claim petition before the Motor Accidents Claims Tribunal, claiming an amount of Rs. 10,52,000 for the death of the husband of the appellant No. 1. Dependants of the deceased consist of his wife, two children and his mother. Case of the appellants was that the quantum of compensation, awarded by the Tribunal, was very meagre, even though the Tribunal found that the

accident occurred due to negligence of the respondent No. 2, the driver of the vehicle owned by respondent No. 1 and the above vehicle was insured by the insurance company, respondent No. 3. The total compensation awarded was only Rs. 1,76,000. Only the quantum of compensation is disputed in this appeal.

2. The deceased was aged only 48 at the time of accident, that is, on 16.6.1996. His widow was much younger. Tribunal has taken 13 as the multiplier, as the deceased was aged 48, at the time of the accident. If the age of the widow was taken, a higher multiplier ought to have been taken. But, the Apex Court in various cases held that multiplier should be selected for claims under Section 166 considering the age of the widow and the deceased and lower multiplier should be taken for calculation of dependency compensation. See United India Insurance Co. Ltd. v. Lehru : [2003]2SCR495 . A three-member Bench of the Supreme Court in Supe Dei v. National Insurance Co. Ltd. , held that the Second Schedule to the Motor Vehicles Act is framed for the purpose of awarding compensation under Section 163-A, but it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act. Since the victim of the accident in that case was aged 32, considering the Second Schedule, Hon'ble Supreme Court accepted 17 as the multiplier. In United India Insurance Co. Ltd. v. Patricia Jean Mahajan : [2002]3SCR1176 , the Apex Court held that except in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to the introduction of the multiplier system, were held to be no more good system. It was further held that normally the multiplier, as indicated in the Second Schedule, should be applied. Though the Second Schedule is found to be a safe guide for the purpose of calculation of the amount of compensation, in special circumstances, it can be varied. In that case, it was also held that if the multiplicand is very high, a lesser multiplier can be taken. In Arati Bezbaruah v. Dy. Director General, Geological Survey of India : [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 Motor Vehicles Act. Deviation from the structured formula can be resorted to only in exceptional cases and ordinarily the above multiplier system should be followed. In view of the above decision, contention of the appellants that Section 163-A covered cases when there is no negligence on the part of the other side etc., if

negligence is proved on the other side, always compensation awarded should be more cannot be accepted.

3. Now, we will consider what is the multiplicand to be used in this case. It is the case of the appellants that claimant was employed in Bahrain. Exh. A7 would show that he was employed in British Club at Bahrain and his salary was Bahrain Dinar 90 per month. He came for leave and after the leave, when he was going back, the accident occurred on his way to the airport. Exh. A7 series also shows that he was on leave at the time of death and salary statement shows that leave salary was also paid by the Bahrain company till date of death. He was employed as a porter at Bahrain. 90 Bahrain Dinar was equivalent to Rs. 8,734 as per the exchange rate applicable at the time of accident. Apart from the above salary, according to the claimant, he was also getting other facilities like boarding and lodging, etc. In Patricia Jean Mahajan's case : [2002]3SCR1176 , it was held that the exchange rate as on the date of the judgment should be taken into account for the victims employed abroad. If it is taken into account, monthly income in rupee terms will be much higher. Even though the Tribunal accepted Exh. A7 certificate as valid, it did not assess the compensation on the basis of Exh. A7 certificate because in Gulf countries, appointments are made on contracts and there is no security of employment. However, in this case, applicant produced Exhs. A8, A8 (a) and A8 (b) copy of the passports which would show that he was working in Bahrain for 14 years. Exh. A9 is the employment identity card given by the Bahrain Government for work. The Claims Tribunal held that considering the educational qualifications, he will be fit only as a manual labourer. If he was working in India, he would have been getting Rs. 1,500 per month. We are of the view that the above view is wholly incorrect. In Kerala, minimum wages fixed for a manual labourer or an unskilled worker employed in a commercial establishment in 1995 was more than Rs. 150 per day. In this case, he was employed in Bahrain and was getting an amount of Rs. 9,000 per month. It is true that living expenses in Bahrain may be high. In this connection, even though no bank accounts were produced, PW 1 deposed that she was getting Rs. 5,000 per month and claimed that at least Rs. 5,000 should be taken as the multiplicand. It is also further submitted that he was residing in the workplace itself and his expenses may not be as much. He was employed in Gulf. He was earning for the family. Considering

the fact that he was earning Rs. 9,000 we take that he was giving at least Rs. 2,500 per month to the family. Since we have taken a low multiplicand, multiplier 13 fixed by Tribunal requires no interference. If that be so, compensation for dependency will be Rs. 1666.66 12 13 = Rs. 2,59,999 rounded to Rs. 2,60,000. Tribunal has awarded Rs. 1,56,000 under this head. Hence, additional compensation payable will be Rs. 1,04,000.

4. It is contended that amount awarded under the various other heads are also very meagre. We are of the opinion that considering the total amount granted, no further increase is necessary. The above amount of Rs. 1,04,000 should be deposited by the insurance company, the respondent No. 3, with 7 per cent interest from the date of application till its deposit within three months from the date of receipt of a copy of this judgment. On deposit of the above amount, Rs. 25,000 should be given to appellant No. 4 and the entire balance amount with interest shall be disbursed to appellant Nos. 1 to 3, widow and children, in equal proportion.

Appeal is allowed partly.