

Jacob and ors. Vs. K.T. Mohammed and ors.

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Court : Kerala

Decided On : Jan-15-2004

Reported in : II(2004)ACC243

Judge : J.B. Koshy and; K. Thankappan, JJ.

Appellant : Jacob and ors.

Respondent : K.T. Mohammed and ors.

Judgement :

J.B. Koshy, J.

1. Can the Motor Accident Claims Tribunal and the High Court calculate compensation in a different method than that is provided under the Second Schedule, when claims are filed under Section 163(A) of the Motor Vehicles Act, 1988 (in short 'the Act'). Facts of the case are not disputed.

2. A youngster at the age of 28 died in a motor vehicle accident on 27.5.1997 when a tempo van having Reg. No. KL-10/B1017 driven by the second respondent hit the motor cycle ridden by the deceased. The parents, brothers and sisters filed a claim for compensation under Section 163(A) of the Act against the owner, driver and the insurer of the tempo van alleging negligence on the part of the driver of the tempo van. The above was numbered as OP. (MV) No. 544/97 on the file of the Motor Accident Claims Tribunal, (sic). The owner and the driver (first and

second respondents) did not appear before the Tribunal and they were declared ex parte. The Insurance Company obtained permission under Section 170 of the Act and contested the case questioning the quantum of compensation claimed. No oral evidence was adduced in the claim. Exhibits A1 to A10 documents were marked by the claimants. The Tribunal awarded only a total compensation of Rs. 67,500/- against the claim of Rs. 4,60,500/-. Hence, the claimants filed this appeal.

3. According to the claimants, the deceased was the Manager of Anupama Jewellery, Thrissur. Exhibit A10 certificate was produced stating that at the time of death he was getting a salary of Rs. 4,000/- per month. The Tribunal did not accept the above as the monthly income because that certificate was not properly proved. The jewellery owner was not examined. The wage registers, etc. kept in the jewellery were not also produced to find out the actual salary paid to the deceased or to show that he was actually employed in the jewellery. Not even oral evidence was adduced to show that the deceased was employed and getting Rs. 4,000/- per month. Therefore, the Tribunal did not accept Exhibit A10 certificate. In the absence of evidence regarding actual income earned by the deceased, Rs. 15,000/- is taken as the notional income per year and Rs. 10,000/- is taken as the loss of dependency as per the Second Schedule. We see no ground to differ from the findings of the Tribunal in this aspect. Even after taking Rs. 10,000/- as annual loss of dependency income, the Tribunal did not follow the second schedule for calculating the compensation.

4. The claim was filed under Section 163(A) of the Act. Section 163(A) reads as follows:

Special provisions as to payment of compensation on structured formula basis: (V- Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the second schedule, to the legal heirs or the victim as the case may be.

The Court is bound to calculate the compensation in accordance with the statutory provisions. The learned Counsel for the Insurance Company cited many decisions of the Apex Court wherein the Honourable Supreme Court observed that the Second Schedule is unscientific and it required modification (see *U.P. State Road Transport Corporation v. Trilok Chandra* : (1996)4SCC362 . But, those observations were made when claims are filed under Section 166 of the Act. But, Section 163(A) of the Act and the second schedule were not declared unconstitutional and still in the statute book and the Courts are bound to follow it. It is true that when claims are filed under Section 166 of the Act, the Court is not bound to follow the structural formula in the Second Schedule blindly and depending upon the circumstances, variations can be made even though the Second Schedule is to be followed as a guideline see *Jyoti Kaul v. State of M.P.* : (2002)6SCC306 , and *United India Insurance Co. Ltd. v. Patricia Jean Mahajan* : [2002]3SCR1176 . When parents are the claimants, the Court also can consider the age of the parents while awarding compensation in a claim filed under Section 166 of the Act. But, that can be done only in cases when claims are filed under Section 166 of the Act. Here, the claim is filed under Section 163(A) of the Act. When claims are filed under Section 163(A) of the Act, the Court is bound to award compensation strictly as per the structural formula in the Second Schedule. Legislation is not the job of judiciary. Section 163(A) of the Act was not there in the original Act of 1988. It was inserted by Act 54 of 1994, The object of the legislation of Section 163(A) of the Act is considered by the Apex Court in *Oriental insurance Co. Limited v. Hansrajhai V. Kodala* : [2001]2SCR999 . The Honourable Apex Court held as follows:

In this context if we refer to the Review Committee's report, the reason for enacting Section 163A is to give earliest relief to the victims of the motor vehicle accidents. The Committee observed that determination of cases takes a long time and, therefore, under a system of structural compensation, the compensation that is payable for different classes of cases depending upon the age of the deceased, the monthly income at the time of death, the earning potential in the case of a minor, loss of income on account of loss of limb, etc. can be notified and the affected party can then have option of their accepting lumpsum compensation under the Scheme of structural compensation or of pursuing his claim through the

normal channels....As per the objects and reasons, it is a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. On the basis of the said recommendation after considering the report of the Transport Development Council, the bill was introduced with 'a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational' i.e., Section 163A. It is also apparent that compensation payable under Section 163A is almost based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied....

The liability under Section 163(A) is one created by the statute falls outside the purview of tort or actual damages as held by a Full Bench of this Court in National Insurance Co. Ltd. v. Malathi C. Salian : 2003(3)KLT460 . Hence, the compensation has to be calculated as per the Second Schedule.

5. Since the deceased was between the age group of 25-30, as per the Second Schedule multiplier to be taken is 18. The Second Schedule specifically states that the age of the victim is to be taken into consideration for adopting the multiplier. Therefore, the compensation payable for loss of dependency due to the death is Rs. 1,80,000/- (10,000 x 18). For funeral expenses Rs. 2,000/- and for loss of estate Rs. 2,500/- can be allowed. The claimants are also not entitled to get compensation for pain and sufferings or any other head which is not mentioned in the Second Schedule. So the compensation payable will be Rs. 1,84,500/-. The Tribunal had awarded only Rs. 67,500/- as compensation. Therefore, the claimants will be entitled to Rs. 1,17,000/- more than that is awarded by the Tribunal. The above amount shall be deposited by the third respondent Insurance Company within two months from the date of receipt of a copy of this judgment with 9% interest from the date of application till its deposit. On deposit of the amount, the amount should be paid in crossed Demand Draft in the name of appellants 1 and 2 in equal proportion.

The appeal is allowed partly.

