

Kunhimon and Others Vs. P. Bhaskaran, Partner Pipe Field and Others

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Court : Kerala

Decided On : Jun-30-2011

Judge : A.K. Basheer & P.Q. Barkath Ali

Appeal No. : M.A.C.A.No.1726 of 2010

Appellant : Kunhimon and Others

Respondent : P. Bhaskaran, Partner Pipe Field and Others

Judgement :

BarkathAli, J.

The short question which arise for consideration in this appeal under section 173 of the Motor Vehicles Act by the claimants is while assessing compensation for loss of dependency under section 163A of the Motor Vehicles Act in a fatal accident case, what is the multiplier that has to be adopted i.e., whether on the basis of the age of the deceased or on the basis of age of parents of the deceased.

2. Appellants are the parents, brothers and sisters of deceased Noupal who died in a motor accident. In this appeal they challenge the judgment and award of the Tribunal dated February 23, 2010 awarding a compensation of Rs.1,83,700/- for the loss caused to them on account of the death of Noupal in that accident.

3. Deceased Noupal was aged 22 at the time of the accident and was a bachelor and used to earn Rs.3,200/- per month as an Auto-rickshaw Mechanic, according

to the appellants. On May 30, 2008 at about 11.15 p.m. while Noupal was standing on the side of the road in

Thavalakulam Centre, he was knocked down by a lorry bearing registration No.KL-07-AZ-6802. He sustained serious injuries and he succumbed to the injuries sustained while undergoing treatment in the hospital. Alleging negligence against the second respondent, the driver of the offending lorry, the claimants filed the O.P. before the Tribunal claiming a compensation of Rs.5,76,000/-.

4. Respondents 1 and 2, the owner and the driver of the offending lorry, remained absent before the Tribunal. The third respondent, insurer of the offending lorry, filed a written statement admitting the policy.

5. This O.P. was jointly tried along with other Original Petitions filed by the legal heirs of other deceased persons in the accident and a common award was passed. Exts. A1 to A25 were marked on the side of the claimants. The Tribunal, on an appreciation of the evidence, found that the accident occurred due to negligence of the second respondent, the driver of the offending lorry and awarded a compensation of Rs.1,83,700/- with interest @ 7.5% per annum from the date of petition till realization and a cost of Rs. 5,000/-. The

claimants have come up in appeal challenging the quantum of compensation awarded by the Tribunal.

6. Heard the counsel for the claimants and the counsel for the Insurance Company.

7. The accident is not disputed. The finding of the Tribunal that the accident occurred due to the negligence of the second respondent, driver of the offending lorry, and that the deceased died as a result of the injuries sustained in the accident are not challenged in this appeal. Therefore, the only question, which arises for consideration, is whether the claimants are entitled to any enhanced compensation.

8. The Tribunal awarded a total compensation of Rs.1,83,700/-. Break up of the compensation awarded is as under:-

Funeral expenses	Rs. 2,000/-
Loss of estate	Rs.2,500/-
Loss of dependency	Rs. 1,79,172/-
TotalRounded to	Rs.1,83,672/-Rs.1,83,700/-

9. Counsel for the claimants sought enhancement of compensation for loss of dependency.

10. The Tribunal took the monthly income of the deceased as Rs.3,200/- and after deducting 1/3 for his personal expenses, took the balance amount of Rs.2,133/- as his monthly contribution to his family which comes to Rs.25,596/- per annum. The Tribunal adopted a multiplier of 7 taking into consideration the fact that claimants 1 and 2, the parents were aged 65 and 61 respectively at the time of the accident and awarded Rs.1,79,172/- towards loss of dependency.

11. Learned counsel for the appellant Sri.M.R.Nandakumar argued that the multiplier adopted by the Tribunal is erroneous as the same was fixed on the basis of the age of the parents of the deceased, that this being a claim under Section 163 A of Motor Vehicles Act, the multiplier as shown in Second Schedule of the Act has to be adopted on the basis of the age of the deceased.

12. Sri.George Cherian, learned counsel for the Insurance Company supported the award of the Tribunal and further contended that the Tribunal deducted only 1/3 of the income of the deceased for his personal expenses, but as the deceased was a bachelor, = of his income should have been deducted towards his personal expenses.

13. Learned counsel for the Insurance Company cited the following decisions in support of his case :

1. U.P.State Road Transport Corporation and others v. Trilok Chandra and others (1996 (4) Supreme Court Cases 362)
 2. Unni v. Baby John (2008(2) KLT 78)
 3. Ramesh Singh v. Satbir Singh (200891) KLT 614 (SC)
 4. Syed Basheer Ahamed and others v. Mohammed Jameel and another (2009 (2) Supreme Court Cases 225)
 5. United India Insurance Co.Ltd v. Mathai (2009(3) KLT 231)
 6. Supe Dei (Smt) and others v. National Insurance Company Limited and another (2009(4) Supreme Court Cases 513)
 7. National Insurance Company Limited v. Gurumallamma and another (2009 (16) Supreme Court Cases 43)
 8. Mohd.Ameeruddin and another v. United India Insurance Company Limited and another (2011(1) Supreme Court Cases 304)
14. Of the above decisions, Mohd.Ameeruddin and another v. United India Insurance Company Limited and another (Supra) and Syed Basheer Ahamed and others v. Mohammed Jameel and another (Supra) and Unni v. Baby John (Supra) would not apply to the facts of the present case. Those decisions deal with the claim under Section 166 of Motor Vehicles Act, while in the present case, the claim is made under Section 163 A of Motor Vehicles Act.
15. In U.P.State Road Transport Corporation and others v. Trilok Chandra and others (Supra), the three Judge Bench of the Apex Court has held that selection of multiplier cannot be solely dependent on the age of the deceased following the principles laid down in G.M., KSRTC v. Susamma Thomas (1994(2) SCC 176). The Apex Court has also followed the same principles in Ramesh Singh v. Satbir Singh (Supra) and held that if a young man is killed in an accident leaving behind aged parents who may not survive long enough to match with a high multiplier provided by Second Schedule, Court has to offset such high multiplier and balance same with short life expectancy of claimants. A Division Bench of this court

followed these principles in

United India Insurance Co.Ltd v. Mathai (Supra).

16. But in a recent decision in National Insurance Company Limited v. Gurumallamma and another (Supra), the Apex Court has held that in a claim under Section 163A of Motor Vehicles Act, multiplier stricto sensu is not applicable. The Apex Court has observed further therein thus:

"Multiplier stricto sensu is not applicable in the case of fatal accident. The multiplier would be applicable only in case of disability in non-fatal accidents as would appear from Note 5 appended to the Second Schedule. Thus, even if the application of multiplier is ignored in the present case and the income of the deceased is taken to be Rs.3300 per month, the amount of compensation payable would be somewhat between Rs.6,84,000 to Rs.7,60,000.

As the Second Schedule provides for a structured formula, the question of determination of payment of compensation by application of judicial mind which is otherwise necessary for a proceeding arising out of a claim petition filed under Section 166 would not arise. The Tribunal in a proceeding under Section 163-A of the Act is required to determine the

amount of compensation as specified in the Second Schedule. It is not required to apply the multiplier except in a case of injuries and disabilities."

17. In the light of the principles laid down in Gurumallamma's case (Supra), we are of the view that the multiplier as shown in Second Schedule to the Motor Vehicles Act on the basis of the age of the deceased has to be applied in the case of a claim under Section 163-A of the Act.

18. Thus considered, in the present case, the deceased was aged 22 at the time of the accident. Therefore, the proper multiplier that has to be adopted in this case is 17 as shown in Schedule II of the Motor Vehicles Act. As regards the income taken by the Tribunal and the deduction of 1/3 towards his personal expenses, we find the same to be justifiable. Thus calculated for the loss of dependency, the

claimants are entitled to a compensation of Rs. 4,35,132/- (2133 x 12 x 17). Thus on this count, the claimants are entitled to an additional compensation of Rs.2,55,960/-.

19. In the result, the claimants are found entitled to an additional compensation of Rs.2,55,960/- with interest @ 7.5% per

annum from the date of petition till realisation and proportionate cost.

The 3rd respondent being the insurer of the offending vehicle shall deposit the amount before the Tribunal within two months from the date of receipt of a copy of this judgment. Regarding the apportionment of the compensation amount and disbursement of the same, the direction of the Tribunal will stand. The award of the Tribunal is modified to the above extent.

The appeal is disposed of as found above.

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