

(2009) 09 KL CK 0074**High Court Of Kerala****Case No: M.A.C.A. No. 393 of 2003 (C)**

Joseph

APPELLANT

Vs

Giji Varghese and Others

RESPONDENT

Date of Decision: Sept. 15, 2009

Acts Referred:

- Kerala Motor Vehicles Taxation Act, 1976 - Section 140, 163A, 166

Citation: (2010) ACJ 2313 : (2009) 4 ILR (Ker) 327 : (2009) 3 KLJ 502 : (2009) 4 KLT 199 :
(2011) 7 RCR(Civil) 2181

Hon'ble Judges: C.N. Ramachandran Nair, J; C.K. Abdul Rehim, J

Bench: Division Bench

Advocate: Shaji Thomas Porkkattil, for the Appellant; A.C. Devy, for the Respondent

Judgement

C.K. Abdul Rehim, J.

The appellant herein is the claimant before the Tribunal. The appellant's brother Pappachan alias Thomas sustained fatal injuries when a Jeep knocked down him on the public road, on 2.11.1995. The deceased succumbed to the injuries after 33 days of the accident. The deceased was an unmarried man, Other" sibling of the deceased were impleaded as respondents 4 to 8 before the Tribunal, According to the appellant/claimant the deceased was an Agriculturist earning monthly income of Rs. 2500/-. The deceased was aged 54 years at the time of accident. The Tribunal found that neither the claimant nor the other sibling are dependents of the deceased, and hence they are not entitled for any compensation under the head of dependency. The Tribunal found that the appellant/claimant as well as respondents 4 to 8 are entitled for a total compensation of Rs. 26,500/-. But considering the provisions u/s 140 of the M.V. Act an amount of Rs. 50,000/- was awarded. The claimant as well as respondents 4 to 8 were allowed equal right over the amount of compensation.

2. Heard the learned Counsel for the appellant and Standing Counsel appearing for 3rd respondent insurance company. The appellant contended that the deceased was unmarried and having no issues, and that the deceased was living along with the appellant. According to learned Counsel for the appellant even when a claim is raised u/s 166 of the M.V. Act, the Tribunal is obliged to bear in mind the quantum of compensation which the claimant would have received u/s 163A and the compensation awarded u/s 166 can never be lesser than what is payable under the structured formula in Schedule II u/s 163A of the Act. In support of the above contention counsel for the appellant had placed reliance on a decision of this Court in [National Insurance Co. Ltd. Vs. Muneer](#), . According to learned Counsel for the appellant the compensation provided under second schedule in Section 163A of the Act can be taken as a guideline while determining compensation u/s 166 also, and therefore the compensation for dependency Ought to have been calculated based on the second schedule, is the contention. He had also placed reliance on the decision in *Supe Dei (Smt) and Ors. v. National Insurance Co. limited and Anr.* (2009) 4 SCC 513.

3. In the case at hand the deceased was an unmarried Agriculturist aged 54 years. Sibling of the deceased are living separately along with their families. The deceased was living along with the appellant/claimant. There is absolutely no evidence on record to show that neither the appellant nor respondents 4 to 8 are dependent on. The income of the deceased. Therefore it is an admitted fact that the claimants are not dependents on the deceased. The questions to be considered in such a situation is as to whether the Tribunal is bound to give minimum compensation payable under the structured formula.

4. Before entering on any finding on the question as to whether the Tribunals are bound to award minimum compensation as provided under the structured formula in claims u/s 166, it is necessary to examine whether the claimant and respondents; 4 to 8 in this case would have been eligible for the total amount of compensation as provided under the second schedule, if the claim was u/s 163A. We notice that in a number of cases the Hon'ble Supreme Court held that even in claims u/s 163A the structured formula under (be schedule need be treated only as a guideline. In 13.P, [U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others](#), the Hon'ble Supreme Court had pointed out in detail about the shortcomings in the schedule and held that the schedule can only be used as a guide. It was also held that the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. In a recent decision of the Hon'ble Supreme Court in *Ramesh Singh and Anr. v. Satbir Singh and Anr.* I (2008) ACC 765 it is found that u/s 163A only a system was introduced wherein the burden of proving negligence was avoided and thereby a speedy remedy was provided, but the selection of multiplier cannot in all cases u/s 163A be dependent on the age of the deceased. If a young man is killed in the accident leaving behind aged parents who may not survive long enough to match with a high multiplier provided in the second schedule then the Court has to

offset such high multiplier and balance the same with the short life expectancy of the claimants. Going by the above principle it is clear, and evident that the structured formula u/s 163A is not a blind rule which need be followed considering the age of the deceased in all cases. On the other hand in a case u/s 163A also, the factor of multiplier need be adopted according to the factual situation prevailing in each and every case. So also it can only be held that in a case where the dependency of the claimants on the income of the deceased is nil on the basis of the factual situations, the compensation under the structured formula of the second schedule could not be granted, even if the claim is u/s 163A. Apart from that, in many decisions of this Court and the apex Court it is held that a claim under Section 163A and a claim u/s 166 are distinct and mutually exclusive. Therefore we have no hesitation to hold that in a case where the claimants are not dependents no amount can be awarded taking note of the multiplier based on the age of the deceased or on the age of the claimant as provided under structured formula in the second schedule u/s 163A. Therefore on the facts of the Case at hand we find no interference is called for with respect to non-awarding of any amount under the head of dependency.

5. The learned Counsel for the appellant further raised a contention that even though there is no loss of dependency, there is loss of estate to the claimants and respondents 4 to 8, they being legal heirs of the deceased. The contention is that the Tribunal ought to have granted compensation considering the loss of estate. It has come out in evidence that the deceased was an Agriculturist. Even though there is no proof regarding quantum of income derived by the deceased, it can be presumed that the deceased was earning some amount out of agricultural operations. If that be so, whatever surplus amount, which will remain after meeting personal expenses of the deceased, would have been his savings which ultimately could have devolved upon his sibling (legal heirs) as his estate. Taking view of the matter in this angle, we are of the opinion that the Tribunal ought to have granted compensation under the head of loss of estate. On our moderate estimate we arrive that the deceased was getting notional income of Rs. 1500/- per month. Considering the fact that he had no wife and children 2/3rd of the amount can be deducted towards his personal expenses. Based on the age of the deceased the correct multiplier to be adopted is 11. Therefore 1/3rd of the earnings can be computed as loss of estate of the deceased. Thus the legal heirs of the deceased are entitled to get an amount of Rs. 66,000/- towards loss of estate. We are inclined to award the said amount. Hence the total compensation need be re-fixed at Rs. 92,500/- (Rs. 66,000-Rs. 26,500).

6. In the result the appeal is partly allowed re-fixing the total compensation payable to the appellant and respondents 4 to 8 as Rs. 92,500/-. Compensation u/s 140, if any paid, shall be set off against the said amount. The amount of compensation shall be shared equally among the appellant and respondents 4 to 8, The 3rd respondent insurance company will make payment of the amount of compensation within a

period of three months.