(2011) 07 KL CK 0127

High Court Of Kerala

Case No: M.A.C.A. No. 493 of 2011

The National Insurance Co. Ltd.		APPELLANT
	Vs	
P. Suhara and Others		RESPONDENT

Date of Decision: July 20, 2011

Hon'ble Judges: R. Basant, J; N.K. Balakrishnan, J

Bench: Division Bench

Advocate: Lal George, for the Appellant; Srinath Girish, for the Respondent

Final Decision: Allowed

Judgement

R. Basant, J.

Insurer is the Appellant. The insurer claims to be aggrieved by the quantum of compensation awarded to the claimants in respect of death of their husband/father - a 49 year old Lecturer in the Department of Physics, Feroke College, Kozhikode. The death had taken place on 5/5/2003. A total compensation of Rs. 29,88,014/- has been awarded as per the details shown below:

Sl.No.	Head of claim	Amount Details
	awarded	
1	Transport	1000
2	Damage to clothing	500
3	Pain and suffering of victim	10000
4	Funeral Expenses	3000
5	Loss of love and affection	10000
6	Loss of Estate	3000

7	Loss of companion	5000
	Loss of	23682 x 12 x 13 x 4/5
8	Dependency	2955514
	Total	7% interest. from 2988014 7/11/05

2. The learned Counsel for the insurance company contends that the quantum of compensation awarded is excessive. Called upon to explain the precise nature of challenge which the Appellant wants to mount against the impugned award, the learned Counsel for the Appellant submits that the Appellant is aggrieved by the quantum of compensation awarded under the head of loss of dependency. Exts.A1 and B1 are the salary certificates produced. They show that the total monthly income as on the month prior to the death of the deceased was Rs. 21,617/- and Rs. 22,364/-. The minor difference that had crept into them is on the computation of the Dearness Allowance payable. That difference can safely be ignored and the total monthly income as on the date of the death can be reckoned as Rs. 21,617/-, the lesser of the two figures.

3. From this, income tax had to be deducted. Personal expenses of the deceased has to be reduced. The advantage derived because of accellerated lump sum payment of the amount has to be taken into reckoning. At the same time, the future improvement in prospects of the 49 year old deceased who was in stable and settled employment has also got to be taken into account. The Tribunal reduced from the monthly income the amounts payable as income tax, profession tax etc., and reckoned the figure at Rs. 18,217/-. To this, 30% was added to provide for future improvement.

4. The Tribunal deducted only 1/5th of the salary towards personal expenses of the deceased. It is contended that this deduction is not sufficient. A higher fraction must have been deducted from the monthly salary for the personal expenses of the deceased. For these reasons, the learned Counsel for the insurance company contends that the quantum of compensation awarded under the head of loss of dependency deserves to be modified.

5. The learned Counsel for the claimants contends that the deceased could safely have aspired to continue in employment till he attains the age of 60 years. Inevitably, in the nature of the employment that he was, the salary must have been raised several times before he would retire from service. Considering the number and nature of dependents - young widow aged 37 years, two minor children aged 15 years and 6 years respectively and 3 adult daughters through an earlier divorced wife as also the mother of the deceased were depending on him at the time of his death. In these circumstances, it would be absolutely reasonable to assume that the deceased would have arranged his personal expenses in such a manner that he would not have to lay his hands on more than 1/5th of the amount, contends the learned Counsel for claimants/Respondents.

6. We have considered all the relevant circumstances. We are satisfied that Rs. 21,617/- can be reckoned as the multiplicand, duly accounting for the possible future increase in salary, and the advantage derived from accellerated lump sum payment as also providing for deduction by way of income tax (Rs. 1,200/- a month, as can be seen from the salary certificate).

7. The next ground of challenge is that the Tribunal has reckoned only one-fifth of the monthly earnings as the personal expenses of the deceased. The deceased was having wife and two minor children as also three major children in an earlier marriage. Considering the relatively high amount of monthly salary, we find it safe to accept the contention of the learned Counsel for the Appellant that one-third must have been deducted towards the personal expenses of the deceased. The Tribunal had taken only one-fifth as the personal expenses of the deceased.

8. The next contention is about the multiplier reckoned by the Tribunal. The Tribunal accepted 13 as the multiplier and that is perfectly justified by the decision of the Supreme Court in Sarla Verma"s case [(2009) 6 SCC 121]. The learned Counsel for the Appellant contends that accepting the admitted case of the claimants, he would have been in service only for a further period of 11 years. Thereafter he may have secured some other employment but it would be presumptuous to assume that he would have continued to earn as he was doing prior to his retirement. The learned Counsel, in these circumstances, submits that reckoning 13 as the multiplier and the same amount as the multiplicand of the 13 years is not justified. We find merit in that contention. For 11 years, without any dispute, the deceased could have aspired to continue in his present employment. For two years thereafter, he might not have earned the same salary/remuneration as he could have earned prior to his retirement. For the last two years, we assume that the salary can be reckoned at only half the salary presently earned by him. We, therefore, accept the contention that realistic reduction of the compensation amount has to be made. We are satisfied, in these circumstances, that 12 can be reckoned as the multiplier considering 11 years of future earnings in the present employment and earnings of half such amount after retirement for the last two years, i.e. 12th and13th years.

9. The above discussion leads us to the conclusion that under the head of loss of dependency, the claimants will be entitled only to an amount of Rs. 20,75,232/- (Rs. 21617 x 2/3 x 12 x 12). Consequently, the total amount awarded will have to be reduced by an amount of Rs. 8,80,282/-, i.e. Rs. 29,55,514 minus 20,75,232.

10. The challenge in this appeal succeeds to the above extent. No other direction of the Tribunal warrants interference.

11. In the result:

a) This appeal is allowed in part.

b) All other directions are upheld, but it is held that under the head of loss of dependency, the claimants shall be entitled only to an amount of Rs. 20,75,232/- as shown above.