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## Kerala State Road Trans. Corpn. Vs Agnus Thomas

A.S. No. 52 of 1983

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**Court:** High Court Of Kerala

**Date of Decision:** March 12, 1990

**Citation:** (1990) 2 ACC 554 : (1990) ACJ 1074

**Hon'ble Judges:** Varghese Kalliath, J

**Bench:** Single Bench

**Advocate:** P. Gopalakrishnan Nair, for the Appellant; V.O. John, for the Respondent

**Final Decision:** Dismissed

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### Judgement

Varghese Kalliath, J.

This is an appeal by the first defendant in a suit for damages. The life of a young man, Dominic, was snapped away

by the rash and negligent driving of a bus owned by the first defendant. The tragic event happened on 3.6.1973. Dominic was an able-bodied

young man aged 22. He was going on a bicycle and he was keeping to his side. It is in evidence that he was on the left extremity of the road. This

is so stated by the witnesses examined in the case. The witness said that the cyclist was not on the tarred portion of the road. Further the evidence

in the case shows that the driver of the vehicle was negligent and rash in driving the bus and that was the reason for the accident. Anyhow, Dominic

lost his life, thereby the plaintiff mother lost her son. The mother can approach the court only for compensation for the heavy loss which really

cannot be compensated. Of course, the court can grant pecuniary damages for the irreversible damage caused to the mother of the deceased

Dominic. Plaintiff claimed Rs. 50,000/- for the pain and agony she has suffered and also the pecuniary loss on account of the untimely death of her

son Dominic.

2. The first defendant filed a written statement contending that the mother has no entitlement to get any compensation at all. It was said that the

deceased Dominic was negligent and careless and the accident occurred on account of his negligence and not on account of the negligence of the

driver. Further, it was contended that at any rate, the plaintiff is not entitled to a compensation of Rs. 50,000/-. The court below considered the

evidence in the case and came to the conclusion that the driver of the vehicle was negligent and that occasioned the accident. The court below also

found that the damages claimed are reasonable on the basis that there was evidence to establish that Dominic was earning an amount of Rs. 500/-

from dairy business. On a calculation based on the age of the deceased and also the other circumstances involved in the case, the court below

found that Rs. 50,000/- claimed by the plaintiff as compensation is roundly reasonable and decreed the suit. Now the first defendant appeals.

3. Counsel for the appellant has taken an extreme contention that the suit itself is not maintainable. It is not on account of the fact that the plaintiff

has no claim for damages. On a technical ground, suit is not a proper remedy, but the plaintiff ought to have filed an original petition before the

Motor Accidents Claims Tribunal. It has to be noted that when the accident took place, no Tribunal was constituted. When the proceedings were

initiated in this case as an indigent original petition also, no Tribunal was constituted. When there was no Tribunal, it was not possible for the

plaintiff to approach that Tribunal even though she had a right to claim compensation. The indigent original petition was filed on 8.4.1975. The

Motor Accidents Claims Tribunal was constituted only on 17.6.1978. These facts are sufficient to hold that there is absolutely no merit in the

contention that the suit is not maintainable. I overrule that contention and hold that the suit is perfectly maintainable.

4. As regards the question of negligence, the evidence is against the first defendant. It has to be remembered that the driver has not been examined,

even though he was a party to the proceedings. In these circumstances, I see no ground to differ from the finding of the court below that the

plaintiff has established the case that the driver was negligent in driving the vehicle and that caused the accident. The first defendant is vicariously

liable for the negligence of its employee, which resulted in the accident and the consequent death of the plaintiff's son.

5. Now the only question that remains for consideration is the justifiability of the compensation awarded by the court below. At the outset, it has to

be remembered that the compensation awarded to a mother for the loss of an able-bodied young man is only Rs. 50,000/-. There is evidence in

the case that the deceased was earning Rs. 500/- per month from his dairy business. Naturally he would have expanded his business and there

were prospects of increasing his earnings. When we are thinking about the acceleration theory, the fact that a person is able to earn more also has

to be taken into account. This is also applicable in considering the uncertainties of life. So we have to strike a balance in the matter of fixing

compensation of these conflicting matters to be considered for the purpose of determining compensation. The court below has considered all these

matters in the right perspective. Counsel argued that in determining compensation, the court below has taken into account the pain and suffering

caused to the mother and also the loss of expectation of life of the deceased. Certainly, not much evidence is required for the court to hold that the

loss of a young man aged 22 would give pain and agony to his mother. In regard to loss of expectancy of life also, since the deceased was only

aged 22, no evidence is required. If there is loss of expectancy of life, apart from the pecuniary loss, the court can fix a compensation for the loss

of expectancy of life. There were serious disputes as regards this aspect of the matter. If there is loss of expectancy of life, it is a loss not to the

surviving people, but to the dead man and so the surviving heirs of the deceased have no right to claim any compensation on account of the loss of

expectancy of life. This matter was considered by the House of Lords in *Rose v. Ford* (1937) AC 826 and the House of Lords said that the

subject-matter of the claim is normal expectancy of life, and this is "a thing of temporal value, so that its impairment is something for which damages

can be given". It was held that if it is a thing of temporal value, that value must add to the estate of the deceased and as such the legal heirs are

entitled to that amount also.

6. In this case, I do not want to expatiate those aspects of the matter any further, since here the damages fixed is only Rs. 50,000/-, which is found

to be very reasonable by the court below on the basis of the pecuniary loss itself. On a calculation, the court below found that apart from the

compensation for pain and suffering, the pecuniary loss itself will come, after so many deductions, to an amount of Rs. 96,457.50 and in that

context, a consolidated amount of Rs. 50,000/- is certainly reasonable. At any rate, I feel that there is absolutely no justification for this court to

interfere with such a determination by the lower court.

7. In the result, I dismiss this appeal with costs.