

(2014) 06 KL CK 0050

High Court Of Kerala

Case No: MACA No. 2840 of 2008

Shibi Joju

APPELLANT

Vs

M. Sundaran

RESPONDENT

Date of Decision: June 10, 2014**Hon'ble Judges:** Harun-Al-Rashid, J; Anil K. Narendran, J**Bench:** Division Bench**Advocate:** P.V. Chandra Mohan, Advocate for the Appellant; P. Muraleedharan, Advocate for R3, Advocate for the Respondent**Final Decision:** Partly Allowed

Judgement

Harun-Al-Rashid, J.

The legal heirs of deceased Joju Thomas, who died in a road accident, are the appellants. The appeal is directed against the judgment and decree dated 3.6.2008 in O.P.(MV) No. 2986/2001 on the file of the Motor Accident Claims Tribunal, Thrissur.

2. The claimants are the wife, children and parents of the deceased. The accident took place on 27.8.2001. The deceased Joju Thomas was travelling in a tempo van through public road and when he reached at Poonkunnam, the offending bus driven by the 2nd respondent in the Original Petition hit the tempo van, whereby Mr. Joju Thomas sustained serious injuries. Immediately, he was admitted in the West Fort Hospital and while undergoing treatment there, he succumbed to the injuries on 29.8.2001.

3. The Tribunal assessed the award under various heads and granted a decree allowing the claimants to realise Rs. 7,57,550/- with interest @ 7% p.a. from 28.11.2001 till the date of actual payment with proportionate costs. The quantum of compensation awarded is under challenge in this appeal.

4. The deceased was aged 33 years at the time of his death. He was working as a Supervisor in the Rashtra Deepika daily. Exhibits A1 and A7 are the copies of the FIR

and the final report, respectively. Exhibit A3 is the copy of the certificate of postmortem issued by the Medical College Hospital, Thrissur. The deceased sustained 9 ante-mortem injuries and he died of chest injuries.

5. The claimants have produced Exhibit A8 salary certificate and examined PW1. As per Exhibit P8 certificate, the deceased was getting a net salary of Rs. 4,990/- as a Supervisor. Exhibit A8 would also show that the gross salary of the petitioner was Rs. 7,150/-. Out of the gross salary, Rs. 2,160/- is deducted towards EPF, LIC, purchase loan, etc., the details of which are mentioned in the salary certificate. Exhibit A17 is another certificate issued by the employer on 23.1.2008. The same was proved through PW1, who was recalled and re-examined. PW1 testified before court that but for the accident, the deceased Joju Thomas should have been promoted to the post of System Manager entitled to a salary of Rs. 20,000/- per month. Taking into account the fact that Rs. 4,990/- taken as the net salary does not include the EPF amount and other items and considering the educational qualifications of the deceased and Ext. A17 salary certificate, we are of the view that the monthly salary could be fixed as Rs. 6,000/-. The dependents are the wife, three minor children and parents of the deceased. Deducting 1/4th towards personal expenses, the monthly contribution to the dependents would come to Rs. 4,500/-. For future prospects, 50% of Rs. 6000/- is added. Deducting 1/4th thereof towards personal expenses, monthly contribution to the dependents would come to Rs. 6,750/- per month. The annual contribution is Rs. 81,000/-. On that basis, applying the multiplier 16, the claimants are entitled to get Rs. 12,96,000/- as compensation for loss of dependency. Deducting Rs. 6,80,000/- awarded, the claimants are entitled for an additional compensation of Rs. 6,16,000/- under this head. The Tribunal examined the compensation to be awarded under other heads. The Tribunal granted reasonable compensation towards pain and suffering, loss of love and affection, loss of estate, loss of consortium, expenses for treatment, etc. We do not propose to interfere with the compensation awarded under other heads. Thus the claimants are entitled to an additional compensation of Rs. 6,16,000/- with 7% interest from 28.11.2001, till the date of actual payment.

In the result, the appeal is partly allowed. The judgment and decree under appeal is modified. The appellants/claimants are entitled to realise additional compensation of Rs. 6,16,000/- with interest @ 7% from 28.11.2001, till realisation. Since the claimants include minors as well, the compensation shall be distributed in the same manner as directed by the Tribunal. The Insurance Company shall deposit the amount within two months.