

SUPREME COURT OF INDIA

Jayakodi & Ors.

Vs.

Branch Manager, N.I.C. Ltd & Anr.

C.A.No.401 of 2008

(K.Balakrishnan,CJI. R.V. Raveendran and J.M.Panchal,JJ.)

11.01.2008

ORDER

K.G. Balakrishnan CJI

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(Arising out of SLP (Civil) No. 13746 of 2004)

1. Leave granted. Heard learned counsel.

2.The claimants in the Motor Accident Claim case are the appellants before us. Mathiyalagan (son of claimants 1 and 2 and brother of claimants 3 to 5) died in a motor accident on 16.12.2001. The Tribunal found that he was aged 17 years, owned 7 acres of land and managing his agricultural operations. The family was well placed, the father being an Advocate. The Tribunal assessed the income of the deceased as Rs.3,000/- per month. After deducting one-third towards living expenses of the deceased, the Tribunal determined the contribution to the family as Rs.24,000/- per annum. By applying the multiplier of 16, it arrived at the loss of dependency as Rs.3,84,000/-. It awarded Rs.10,000/- towards funeral expenses. It also awarded Rs.1,00,000/- as compensation for the shock and mental agony suffered by the parents. Thus the total compensation awarded by the Tribunal was Rs.4,94,000/- with interest at 9% P.A.

2. On appeal by the Insurer, the High Court assessed the contribution to the family as Rs.12,000/- per annum. By applying a multiplier of 18, it arrived at the loss of dependency as Rs.2,16,000/-. By adding Rs.5,000/- towards the funeral expenses and Rs.30,000/- for mental agony of parents, the High Court arrived at the total compensation payable as Rs.2,51,000/-. Feeling aggrieved by the reduction, the claimants have appealed by special leave.

3. The learned counsel for the appellants submitted that the High Court was not justified in reducing the amount determined as loss of dependency. The deceased was aged 17 years. The father is an Advocate. The mother was aged 32 to 33 years. Having regard to the land holding, family background and prospects of earning, we are of the view that the loss of

dependency determined as Rs.3,84,000/- by the Tribunal did not call for interference. There was no justification for the High Court to reduce the loss of dependency to Rs.2,16,000/-.

4. The Tribunal was not however, justified in awarding Rs.1,00,000/- (at the rate of Rs.50,000/- to each parent) towards shock and mental agony suffered on account of the death of their son. The High Court committed the same error by awarding Rs.30,000/- under this head. When a person dies in a motor accident and his dependent legal representatives claim compensation, the general damages is made up of the loss of dependency plus a token sum towards loss of estate. In the event of a claimant being a spouse another token amount is awarded as loss of consortium. Actual expenditure incurred for transporting the dead body and the funeral, are also awarded by way of special damages. Nothing is awardable under the head of shock and mental agony of the parents or other legal representatives. (See: *N. Sivammal vs. The Managing Director, Pandian Roadways Corporation¹*). Therefore, the sum awarded under the head of 'mental agony of parents' is omitted.

5. It was submitted that as the Insurer has not challenged the award of Rs.30,000/- by the High Court under the head of 'shock and mental agony of parents', it should not be disallowed in an appeal filed by the claimants. It is true that in an appeal by the claimants for enhancement, the compensation awarded should not be reduced. But that is with reference to the 'total compensation' awarded, which is the aggregate of sums awarded under various heads. When an appeal is filed by claimants claiming enhancement, the appellate court will calculate the just compensation, in accordance with law. If the amount so calculated is in excess of what is awarded, the difference is awarded as additional compensation. If the amount calculated is found to be less than or equal to the amount awarded by the court below, then the amount awarded by the court below is maintained. But there cannot be any objection for recalculation of compensation under various heads in accordance with law. So long as the total amount awarded is not less than what is awarded by the court below, there cannot be any objection if the amount is reduced under any particular head.

6. The compensation payable is Rs.3,84,000/- as loss of dependency, Rs.5,000/- as loss of estate and Rs.5,000/- as funeral expenses, total being Rs.3,94,000/-. We accordingly allow this appeal in part and increase the compensation from Rs.2,51,000/- to Rs.3,94,000/-, with interest amount @ 9% per annum from the date of petition till the date of payment as awarded by the Tribunal. The second appellant (father) and appellants 3 to 5 (sisters and brother) are neither dependants nor legal representatives of the deceased. Thus the entire compensation amount shall be taken by the mother (appellant no.1).

Judgment Referred.

¹*AIR 1985 SC 0106*