

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

MACA.No. 4 of 2012 ()

AGAINST THE AWARD IN OPMV 983/2005 of M.A.C.T., MANJERI DATED
18.11.2009

PETITIONERS/APPELLANTS:

1. FATHIMA AGED 65 YEARS
W/O. DECEASED ASSANKOYA
2. NAFEESA AGED 42 YEARS
D/O.DECEASED ASSANKOYA
3. AMINA AGED 40 YEARS
D/O.DECEASED ASSANKOYA
4. AYISHA AGED 38 YEARS
D/O.DECEASED ASSANKOYA
5. ALI AGED 35 YEARS
S/O.DECEASED ASSANKOYA (ALL ARE RESIDING AT
KARAPARAMPATH HOSUE
P.O.THURAKKAL, KONDOTTY, ERNAD TALUK
MALAPPURAM DISTRICT.)

BY ADVS.SRI.K.VIDYASAGAR
SRI.K.M.MOHAMED ABDURAHIMAN

RESPONDENTS:

1. SHIHABUDEEN
S/O. SAIDALIKUTTY, AL FALAH HOUSE, P.O. KUMMINIPPARAMBA
MALAPPURAM DISTRICT.
2. K.E. ABDURAHIMAN
NECHYILTHAZHAM HOUSE P.O.PERUVAYAL, PERUVANNA
CALICUT DISTRICT-673024.
3. ORIENTAL INSURANCE COMPANY LIMITED
DIVISIONAL OFFICE-II, PRAMOD BUILDING, CHERUTTY ROAD
CALICUT-673001.
4. SAINUDEEN, S/O. AHAMMED KOYA (LATE)
KARUPARAMPATH HOUSE, P.O.THURAKKAL, KONDOTTY
ERNAD TALUK, MALAPPURAM DISTRICT-673638.

RR-R3 BY ADV. SRI.M.JACOB MURICKAN
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
RKC

**P.N.RAVINDRAN &
P.V.ASHA, JJ.**

M.A.C.A. No.4 of 2012

Dated this the 19th day of June, 2015

JUDGMENT

Ravindran, J.

The appellants are the claimants in O.P(MV) No.983 of 2005 on the file of the Motor Accidents Claims Tribunal, Manjeri. They are wife, three daughters and son respectively of late Assankoya who was injured in a motor accident that took place at about 9AM on 12.3.2005, while he was standing near a bus stop. The appellants had in the claim petition stated that while the deceased was waiting at the bus stop, the motorcycle bearing registration No.KL.11.L/3756 driven by the first respondent, owned by the second respondent and insured by the third respondent, hit against the deceased, resulting in serious injuries. The victim of the accident was taken to Medical College Hospital, Kozhikkode, where he underwent treatment for about a week and in the course of the treatment, succumbed to the injuries sustained by him on 19.3.2005. The appellants contended that the accident took place on account of the rash and negligent driving of the first respondent. In the claim petition, they claimed the sum of ₹3,00,000/- as compensation under various heads. In the claim petition, yet another son of the victim was joined as the fourth

respondent.

2. Before the Motor Accidents Claims Tribunal, respondents 1 and 2 did not enter appearance and they were therefore set exparte. The third respondent entered appearance and filed a written statement, disputing the insurance coverage for the motor vehicle. Later the third respondent filed an additional written statement admitting the insurance coverage. The fourth respondent, one among the two sons of the deceased, entered appearance and filed a written statement, contending that he is also entitled to a share in the compensation.

3. Before the Motor Accidents Claims Tribunal, the wife of the victim, namely the first claimant, was examined as PW-1 and the fourth claimant, who is none other than the daughter of the victim, was examined as PW-2. They also produced and marked Ext.A1 F.I.R, Ext.A2 postmortem certificate and Ext.A3 wound certificate. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the negligent driving of the first respondent. The Motor Accidents Claims Tribunal awarded the sum of ₹70,500/- as compensation under various heads and directed the third respondent insurer to deposit the said amount together with interest at 7% per annum from the date of petition till the date of deposit, with costs ₹1,000/-. The Motor Accidents Claims Tribunal

directed that out of the amount deposited the sum of ₹5,000/- shall be paid over to the wife of the victim and the balance shall be shared equally among the claimants and the fourth respondent. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

4. We heard Sri.K.M.M.Abdurahiman Thoppil, learned counsel appearing for the appellants and Sri.Jacob Murickan, learned counsel appearing for the third respondent, insurer. We have also gone through the pleadings and the materials on record. The claimants had in the claim petition averred that the deceased was a mason earning ₹7,000/- per mensem. The fourth claimant examined as PW-2 had deposed to the fact that her father was earning a monthly income of ₹7,000/-. The Motor Accidents Claims Tribunal however held that there is no evidence to prove the income or avocation of the deceased. The Motor Accidents Claims Tribunal thereafter proceeded to award compensation under the head of loss of dependency taking the annual income of the deceased as ₹15,000/- and applying the multiplier 5. After deducting $\frac{1}{3}^{\text{rd}}$ of the amount thus quantified towards personal expenses of the deceased, the Motor Accidents Claims Tribunal awarded the sum of ₹50,000/- as compensation under the head loss of dependency.

5. It has come out in evidence that the deceased was aged only

65 years, at the time of the accident. It has also come out in evidence that he was employed as a mason. The fourth claimant examined as PW-2 had also deposed to the fact that he was earning a monthly income of ₹7,000/- and that he had work on all days except Sundays. During cross examination to a pointed question put to her, as to whether her father was dependant on his children, she stated that he was earning his own keep. In such circumstances, we are of the considered opinion that the Motor Accidents Claims Tribunal erred in taking the annual income of he deceased as ₹15,000/-. The Motor Accidents Claims Tribunal ought to have on a modest estimate, in our opinion, taken the monthly income of the deceased as ₹2,500/-. Having regard to the age of the victim, we are of the opinion that only $\frac{1}{4}^{\text{th}}$ of the income should have been deducted towards personal expense of the deceased. The deceased was admittedly aged more than 65 years. The multiplier to be applied in the case of persons aged 65 years and above, as per the principles laid down by the Apex Court in ***Sarala Varma v. Delhi Transport Corporation [2010 (2) KLT 802]*** is 5. Computed on that basis, the compensation payable to the claimants under the head loss of dependency will be $\text{₹}2500 \times 12 \times 5 \times \frac{3}{4} = \text{₹}1,12,500/-$. As stated earlier, the Motor Accidents Claims Tribunal has awarded only the sum of ₹50,000/- under that head. We accordingly award a further sum of ₹62,500/- as compensation under

the head loss of dependency to the appellants and the fourth respondent.

6. The impugned award discloses that the Motor Accidents Claims Tribunal has awarded only the sum of ₹2,000/- towards funeral expenses. In the light of the binding decision of the Apex Court in ***Rajesh v. Rajbir Singh*** (2013 (3) KLT 89 (SC), wherein it has been held that in the absence of evidence to the contrary for higher expenses, at least an amount of ₹25,000/- should be awarded, we award an additional sum of ₹23,000/- towards funeral expenses.

7. In ***Rajesh v. Rajbir Singh*** (2013 (3) KLT 89 (SC), the Apex Court has also held that at least ₹1,00,000/- should be awarded for loss of consortium to the wife in the case of death of the husband. The Motor Accidents Claims Tribunal has in the instant case awarded only the sum of ₹5,000/- under that head. We accordingly award an additional amount of ₹95,000/- as compensation to the first appellant/claimant under the head loss of consortium.

8. The Motor Accidents Claims Tribunal has by the impugned award, awarded only the sum of ₹5,000/- as compensation for pain and suffering. The deceased did not die instantaneously. He died on 19.3.2005, while he was undergoing treatment in Medical College Hospital, Calicut. Ext.A3 wound certificate discloses that besides other injuries, he had sustained multiple facial bone fracture. Having regard

to the nature of the injuries and the fact that he had undergone treatment for about a week, for the injuries sustained, we are of the opinion that on a modest estimate, a further sum of ₹15,000/- should be awarded as compensation under the head pain and suffering.

9. As stated earlier, the deceased did not die instantaneously. He was in the hospital for a week. The claimants would certainly have had incurred expenditure to meet unforeseen expenses and also spent money on medicines, notwithstanding the fact that the deceased was undergoing treatment in Medical College Hospital, Calicut. To compensate them for the unforeseen out of pocket expenses, we are inclined to award a sum of ₹5,000/- which would also take care of the expenses of a bystander.

10. The deceased was survived by his wife/the first claimant, his daughters/claimants 2, 3 and 4 and his sons, the fifth claimant and the fourth respondent. Though the children of the deceased were not dependent on him, having regard to the fact that youngest among the children was aged only 30 years, we are of the opinion that a consolidated amount of ₹50,000/- can reasonably be awarded as compensation under the head loss of love and affection to the five children of the deceased, namely claimants 2 to 5 and the fourth respondent. We accordingly award the sum of ₹50,000/- as compensation under the head loss of love and affection to claimants 2

to 5 and the fourth respondent.

We are accordingly award the sum of ₹2,50,500/- as compensation to the claimants and the fourth respondent over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the said amount together with interest at 9% per annum from the date of petition till the date of deposit. Needless to say, having regard to the order passed by this court on 10.1.2012 on C.M.Appln.No.5 of 2012, while condoning the delay of 637 days in filing the appeal, the claimant will not be entitled to interest on the enhanced compensation awarded by this court during the said period of 637 days. Upon such deposit being made, the sum of ₹95,000/- and the proportionate interest thereon shall be released to the first claimant and the balance amount shall be released in equal shares to claimants 1 to 5 and the fourth respondent.

Sd/-
P.N.RAVINDRAN,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

rkc