

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

MACA.No. 188 of 2012 ()

AGAINST THE AWARD IN OPMV 1455/2004 of M.A.C.T., NEYYATTINKARA
DATED 28-02-2011

APPELLANT/4TH RESPONDENT IN O.P. (MV) :

THE BRANCH MANAGER, NEW INDIA ASSURANCE COMPANY LTD
SWADESHABHIMANI COMPLEX, NEYYATTINKARA
REPRESENTED BY THE DULY CONSTITUTED
ATTORNEY (R.SUKUMARAN NAIR)
REGIONAL OFFICE, KANDAMKULATHY TOWERS, M.G.ROAD
KOCHI-682011.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS/PETITIONERS & 3RD RESPONDENT IN O.P. (MV) :

1. SANDEEP JAYA SINGH @ APPU
S/O.JAYASINGH, T.C.11/45 D, SHAROON
MAIN ROAD, KUZHITHURAI P.O.
PIN-629163 (MINOR) REPRESENTED BY J.C.VIMALA
D/O.JACOB, T.C.6/1843(1), P.T.P.NAGAR EAST
P.T.P.NAGAR P.O., THIRUVANANTHAPURAM, PIN-695038
(GRANDMOTHER) AS NEXT FRIEND AND GUARDIAN.

2. SANJAY JAYA SINGH @ ACHU
S/O.JAYASINGH, T.C.11/45 D, SHAROON
MAIN ROAD, KUZHITHURAI P.O.
PIN-629163 (MINOR) REPRESENTED BY J.C.VIMALA
D/O.JACOB, T.C.6/1843(1), P.T.P.NAGAR EAST
P.T.P.NAGAR P.O., THIRUVANANTHAPURAM, PIN-695038
(GRANDMOTHER) AS NEXT FRIEND AND GUARDIAN.

3. B.G.JAYA SINGH
NO.4, N.P.Y.N., ARUMUGHAM ROAD
SIVAKASI, NOW RESIDING AT SHAROON, DOOR NO.11/45 D
MAIN ROAD, KUZHITHURAI P.O., PIN-629163.

R1-R3 BY ADV. SRI.S.MOHAMMED AL RAFI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 10-08-2015, ALONG WITH MACA. 196/2012, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

M.A.C.A.Nos.188 & 196 of 2012

Dated this the 10th day of August, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals have been filed by the Insurance Company aggrieved by the awards in O.P.(MV)Nos.1455/2004 and 1454/2004 on the file of the Motor Accidents Claims Tribunal, Neyyattinkara. Both the cases before the Tribunal were disposed of with other claim petitions also by a common award and therefore we proceed to consider the appeals together.

2. We heard the learned counsel for the appellants Sri.Jacob Murikan and the learned counsel for the claimants Sri.S.Mohammed Al Rafi.

3. The accident in this case involved three vehicles and two persons died. The persons who died are Smt.Ajitha and her son Deepak Jayasingh, who were passengers in an Indica car. They were travelling together and the accident occurred on 13.3.2004 at 4 p.m..

When the vehicle reached Paroorkuzhi junction near Balaramapuram in the Kuzhithura-Thiruvananthapuram National Highway, it was hit by a lorry which came from the opposite direction. In the Indica car apart from the deceased Ajitha and Deepak Jayasingh, her husband and other children were there. The said car got turned on the reverse and came to hit against a Opel car which came behind the Indica car in the same direction.

4. Smt.Ajitha died on 1.4.2004 and Deepak Jayasingh died on 17.3.2004 at the KIMS hospital, where they were admitted for treatment. Apart from the claim petitions filed by the parents and two children of deceased Ajitha who are respondents 1 to 4 in M.A.C.A.No.196/2012, an application for the damage sustained to the vehicle was also filed as O.P.(MV)No.56/2005 by her husband, which was dismissed. There were other claim petitions, the fate of which we are not concerned in these appeals.

5. The learned counsel for the appellant in M.A.C.A.No.196/2012 submitted that O.P.(MV)No.1454/2004 was

filed by the claimants consequent on the death of deceased Ajitha. A total compensation of Rs.19,95,423/- along with interest @ 9% was granted by the Tribunal. It is submitted that her husband Jayasingh, who is the third respondent in M.A.C.A.No.188/2012 (fifth respondent in M.A.C.A.No.196/2012) was also in the party array since he is also a legal representative of the deceased Ajitha. From the total compensation granted, the amount which will have to be apportioned to him has to be deducted as the Insurance Company has no liability to him being the owner and in the absence of such deduction, the Tribunal committed a mistake. The learned counsel also submitted that the judgment of this Court in **New India Assurance Company Ltd. v. Ayisha M. and others (2011 KHC 465)** taking a contrary view is distinguishable on the facts of this case.

6. The learned counsel for the claimants submitted by relying upon the provisions of Sections 166 and 168 of the Motor Vehicles Act that in a claim petition, persons who are not joined as claimants, but are entitled to compensation can be impleaded in the party array as

respondents. According to the learned counsel, there is no defect in the proceedings and the compensation arrived at has been rightly fixed and no further deduction is permissible.

7. In the award passed by the Tribunal, what we find is that the husband of the deceased Smt.Ajitha, going by the cause title has been impleaded as the owner of the Indica car. He was not impleaded as the legal representative who could not join the application and consequently shown among the respondents in the party array. For assessing the compensation, the Tribunal has considered various aspects, including the permanent nature of her employment, salary which she was receiving along with other allowances as on the date of the accident and other factors. The discussion in paragraph 26 of the award shows the following :

she was employed as Assistant Electrical Inspector and was aged 39 years at the time of the accident.

8. It is seen that the Tribunal entered a finding to the effect that since the retirement age of State Government employees is 55, she

had 16 more years of service. The applicants are her parents and two minor children. The Tribunal thereafter observed as follows :

“It is needless to point out that her husband Jaya Singh, the 3rd respondent in this O.P. And the applicant in O.P.No.56/2005 is not entitled to have the compensation amount awarded in the present O.P. apportioned since he is the owner of the vehicle, which is found to have caused the accident and therefore he not being a third party in as much as the accident is concerned.”

9. The question is whether the said finding by the Tribunal can be said to be faulty. The learned counsel for the appellant Sri.Jacob Murikan submits that when legal representative is in the party array, not as a claimant in the array of applicants, the Tribunal will have to apportion the compensation especially in the light of Section 168 of the Motor Vehicles Act. The said submission, according to us, cannot be accepted on the facts of this case. Since he was impleaded as the owner of the vehicle, the finding by the Tribunal cannot be said to be faulty.

We are also fortified in our view in the light of the judgment of the Division Bench in **New India Assurance Company Ltd. v. Ayisha M. and others (2011 KHC 465)**. The Division Bench was of the view in a like case wherein while the father was driving the vehicle, his two sons died in the accident. The mother and siblings of the two victims instituted two claim petitions before the Tribunal. The array of parties included driver, owner and insurer of the vehicle and the father was driving the vehicle. A similar contention was raised that the father being one of the legal representatives, the Tribunal ought to have deducted his share from the amount of compensation payable to the claimants. The said contention was repelled by the Division Bench in the following manner in paragraphs 9 and 10 which we extract herein below:

“9. It is true that the proviso to sub-s.(1) of S.166 of the Act postulates that application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased where death has resulted

from the accident. This is obviously to avoid multiplicity of litigation. The claimants in these two cases have sought compensation for the loss sustained by them due to the death of their dear ones. Sub-cl.(c) of sub-s.(1) enables any or all of the legal representatives of the deceased to institute a claim petition. We hasten to add that we are not oblivious of the proviso to sub-s.(1). The said proviso of course mandates that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased and those legal representatives who have not so joined shall be impleaded as respondents to the application.

10. In the case on hand, the remaining legal representative namely the father of the deceased victims, was on the party array. As has been noticed already, he did not claim any share in the compensation. If in fact, he wanted a share in the amount of compensation, nothing precluded or prevented him from making such a claim.

Since he has not staked any such claim, it cannot be said that it shall be presumed or deemed that the award passed by the Tribunal includes his share as well. Such an assumption is too far fetched and wholly hypothetical, to say the least. More importantly, the appellant did not raise such a contention before the Tribunal. Even assuming the award includes the share of respondent No.4, the father of the victims, we are unable to accept the above contention in view of the scheme enunciated in Chapter XI of the Act. In any view of the matter, we do not find any merit in the contentions raised by the appellant.

The appeals fail and they are accordingly dismissed.”

10. The Division Bench was of the view that the father did not claim a share of compensation and therefore it cannot be said that it shall be presumed or deemed that the award passed by the Tribunal includes his share as well.

11. The learned counsel for the claimants submits that such a contention as now raised was not raised before the Tribunal in the

written statement. The husband did not claim any share also. According to us, the Tribunal has rightly found that he need not be paid any compensation going by the finding in paragraph 26. Therefore, the Tribunal has not reckoned him as a legal representative for awarding the total amount. This is clear from the way in which the total compensation has been arrived at. What we find is that for calculating loss of dependency, after assessing the annual income $\frac{1}{3}$ has been deducted for the personal and living expenses of the deceased. The claimants are four in number and therefore rightly $\frac{1}{3}$ was deducted. Therein also the husband has not been reckoned. In that view of the matter, we find that the appeal (M.A.C.A.No.196/2012) deserves no merit.

12. As far as M.A.C.A.No.188/2012 is concerned, there the claimants before the Tribunal are the siblings of the deceased Deepak Jayasingh (minors) represented by the grand mother. The Tribunal going by the award after considering various aspects assessed a total compensation of Rs.1,85,500/-.

13. The learned counsel for the appellant submits that for loss of dependency, Rs.1,50,000/- has been granted which cannot be justified. It is submitted that the father/parents alone can claim compensation towards loss of dependency if minor son dies. Herein the siblings who are also minors cannot be said to be dependent on the deceased brother who was also a minor at the time of the accident and therefore the amount awarded towards loss of dependency has to be deducted from the total compensation. It is submitted that they are entitled for compensation for loss of love and affection alone apart from special damages which can be claimed.

14. What we find from the total award is that towards funeral expenses Rs.5,000/-, towards pain and suffering Rs.8,000/- and for loss of love and affection Rs.15,000/- alone has been granted. The amount towards loss of dependency has been calculated by taking the notional income of Rs.15,000/- and after deducting 1/3 on account of the personal and living expenses, the balance amount of Rs.10,000/- alone has been reckoned. Of course, the Tribunal has described that the

amount can be reckoned as annual loss of dependency. The deceased was aged only 9 years at the time of the accident and he was a student.

15. True that the compensation that can be claimed is not for loss of dependency, but according to us, in the light of the provisions in the Fatal Accidents Act and in tune with the settled position of law, towards loss of estate, amount can be claimed.

16. Then the question is whether the quantum awarded is on a higher side and the amount can be granted only towards loss of love and affection. We cannot agree with the learned counsel for the Insurance Company that only for loss of love and affection, amount can be granted. The principles under the Fatal Accidents Act and the Motor Vehicles Act, 1988 will show that amount can be granted towards loss of estate. As far as calculation of amount towards loss of estate is concerned, the method adopted by the Tribunal herein is to fix up a notional income being a student at Rs.1,250/- per month. Thereafter a further deduction has also been made for personal expenses. It is therefore clear as submitted by the learned counsel for

the claimants that the compensation cannot be said to excessive. Even for loss of love and affection, normally going by the decisions of the Apex Court especially in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)**, Rs.1,00,000/- can be granted by the Court/Tribunal. We are not going into the said question since according to us even otherwise amount granted towards loss of dependency can be reckoned as towards loss of estate which the siblings can claim in the light of the provisions of the Motor Vehicles Act coupled with the provisions of the Fatal Accidents Act. We do not find that the amount granted is excessive on any count. For all these reasons, we find no reason to interfere with the award.

Both the appeals are dismissed. The parties will suffer their costs in these appeals.

T.R.RAMACHANDRAN NAIR, JUDGE

sv.

K.P.JYOTHINDRANATH, JUDGE