

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

MACA.No. 487 of 2012 ()

AGAINST THE AWARD IN OPMV 1671/2006 of M.A.C.T., PERUMBAVOOR DATED
28-10-2011

APPELLANT/PETITIONER IN OP(MV)NO.1671 OF 2006

1. SUDHAKARAN K. S/O.G.BALAKRISHNA MENON,
AGED 60 YEARS, PUSHPANJALI,
HOUSE NO.OC 30/4913, SUBASH NAGAR, POONITHURA P.O.
PIN-682 038.
2. PUSHPA K.
W/O.SUDHAKARAN, AGED 55 DO.
3. AHSA,W/O.RENJITH MENON,
AGED 28 YEARS, SANDYA NIVAS
4/627, MARADU P.O.

BY ADVS.SRI.REJI GEORGE
SRI.GOPAKUMAR G. (ALUVA)
SMT.ANUPAMA JOHNY

RESPONDENT/RESPONDENT NO.3 IN OP(MV)NO.1671/2006

THE NEW INDIA ASSURANCE CO. LTD.
LAND MORTGAGE BANK BUILDING, REST HOUSE COMPOUND
KOLLAM-691 001.

R BY ADV. SRI.VIJU THOMAS
BY ADV. SMT.M.MEENA JOHN
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
06-07-2015, ALONG WITH MACA. 547/2012, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. Nos. 487 & 547 of 2012

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Dated this the 6th day of July, 2015

JUDGMENT

P.N.Ravindran, J.

M.A.C.A.No.487 of 2012 arises from the award passed by the Motor Accidents Claims Tribunal, Perumbavoor on 28.10.2011 in O.P. (M.V).No.1671 of 2006. M.A.C.A.No.547 of 2012 arises from the award passed by the Motor Accidents Claims Tribunal, Perumbavoor on 28.10.2011 in O.P.(MV)No. 1672 of 2006. The appellants in M.A.C.A.No.487 of 2012 are the claimants in O.P.(M.V).No.1671 of 2006 and the appellants in M.A.C.A.No.547 of 2012 are the claimants in O.P.(M.V).No.1672 of 2006. By a common award passed on 28.10.2011, the Motor Accidents Claims Tribunal awarded the sum of ₹3,84,750/- as compensation to both sets of claimants and directed the third respondent insurer to deposit the said sum together with interest at 8% per annum from the date of petition till the date of deposit along with proportionate costs. The claimants have, dissatisfied with the quantum of compensation awarded by the Tribunal, filed these appeals.

2. The appellants in M.A.C.A.No.487 of 2012 are the father, mother and sister of late Anish Sudhakaran, a fourth semester B.Tech

degree student of SCMS College of Engineering and Technology, Krukkutty. The appellants in M.A.C.A.No.547 of 2012 are the father, mother and sister respectively of late Yadu Krishnan yet another fourth semester B.Tech degree student of the above mentioned college. Late Anish Sudhakaran and late Yadu Krishnan were travelling in the motor car bearing No.KL 07 AJ 0983 along with their class mate Avilesh Jain, another fourth semester B.Tech degree student of the very same college. The car in which they were travelling fell into a canal on account of the rash and negligent driving by the driver of the car and in that accident all the three students drowned to death. The driver of the car Mohammed Sadiq Nasar who was also a student of the very same engineering college also died in that accident. The motor car in which the aforesaid four students were travelling belonged to the first respondent in the claim petitions. The sole respondent herein, the second respondent in the claim petitions, was the insurer of the motor car. The parents of the driver of the car were joined as additional respondents 3 and 4 in the claim petitions. The owner of the car as also the parents of the deceased driver were absent and they were set ex-parte.

3. The respondent insurer alone entered appearance and filed a written statement wherein the main contention raised was that the passengers in the motor car were not covered by the policy of

insurance issued by it. Before the Motor Accidents Claims Tribunal no oral evidence was adduced on either side. However on the side of the claimants Exts. A1 to A20 were produced marked. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the rash and negligent driving of the motor car wherein the deceased students were travelling. Taking note of the fact that the deceased students were undergoing the B.Tech degree course, the Tribunal fixed their notional income at ₹4,000/- and taking into account the age of the mother, awarded the sum of ₹3,12,000/- as compensation under the head loss of dependency. The Tribunal also awarded the sum of ₹2,500/- towards transport to hospital, ₹2,500/- towards funeral expenses, ₹250/-towards damage to clothing, ₹5,000/- towards pain and suffering, ₹2,500/- towards loss to the estate, ₹10,000/- towards loss of love and affection and ₹50,000/- towards loss of future prospects, in all aggregating to ₹3,84,750/-. The claimants have, as stated earlier filed these appeals, dissatisfied with the quantum of compensation awarded by the Tribunal.

4. We heard Smt. Anupama Johny, learned counsel appearing for the appellants, Sri.Viju Thomas, learned counsel for the sole respondent in M.A.C.A.No.487 of 2012 and Sri. P Jayasankar, learned counsel for the sole respondent in M.A.C.A.No.547 of 2012. We have

also gone through the pleadings and the materials on record. The accident in the instant case took place on 10.3.2006. The deceased students were undergoing the fourth semester B.Tech degree course in SCMS College of Engineering and Technology, Karukkuty. Both of them were aged 19 years. The Tribunal has awarded to the claimants in the two claim petitions only the sum of ₹2,500/- towards funeral expenses. The Apex Court has in **Rajesh v. Rajbir Singh** 2013 (3) KLT 89 (SC) held that in the absence of evidence to the contrary for higher expenses, at least an amount of ₹25,000/- should be awarded as compensation under the head funeral expense. The accident in **Rajesh v. Rajbir Singh** (supra) took place on 5.10.2007. Having regard to the principle laid down by the Apex Court in the aforesaid decision, we enhance the compensation awarded under the head funeral expenses in each of the claim petitions to ₹25,000/-. Consequently we award an additional compensation of ₹22,500/- in each of the claim petitions as compensation towards funeral expenses.

5. The Apex Court has in **Amrit Bhanu Shali v. National Insurance Co. Ltd** (2012) 11 SCC 738 awarded to the parents of a 26 year old man, the sum of ₹1,00,000/- as compensation under the head loss of love and affection. The Motor Accidents Claims Tribunal has in the instant case awarded only the sum of ₹10,000/- under that head. In the light of the binding decision of the Apex Court, we award

an additional compensation of ₹90,000/- under the head loss of love and affection to the parents of the victims of the accident.

6. A Division Bench of the High Court of Andhra Pradesh has in **B. Ramulamma and others v. Venkatesh Bus Union and another** (2011 ACJ 1702) awarded compensation to the parents of a final year B.Tech degree student taking the monthly income as ₹12,000/-. The Division Bench held, having regard to the various materials referred to by it that the minimum income of an engineering graduate can be fixed as ₹12,000/- per month. Enhanced compensation was accordingly awarded on that basis applying the multiplier of 15, having regard to the decision of the Apex Court in **Sarla Verma & Others v. Delhi Transport Corporation & Another** (2009) 6 SCC 121. In coming to the conclusion that the minimum income of an engineering graduate can be fixed as ₹12,000/- per month, the Division Bench of the Andhra Pradesh High Court had taken into account the notification issued by the Andhra Pradesh Public Service Commission for appointment to the post of Assistant Executive Engineer in various departments (Entry Level Post) the scale of pay of which was ₹9385-21550 as also the fact that the basic pay of an engineering graduate in Central Government service is ₹15,600/- per mensem plus grade pay which ranges between ₹5,000/- ₹6,000/- per mensem. The relevant portions of the judgment in **B. Ramulamma and others v. Venkatesh Bus Union**

and another (supra) are extracted below:

“51. Thus in view of the present salaries being earned by the computer engineers, there cannot be any doubt to say that the deceased would have earned minimum Rs.12,000 to Rs.15,000 per month. It has to be seen that nowadays Class IV employees are also getting minimum Rs.7,000 to Rs.10,000 per month depending upon their service. The Junior assistants are also getting Rs.12,000 to Rs.15,000 per month. Therefore, considering the normal scales being earned by the government employees and also the minimum wage scales fixed to the technical persons, we are of the view that the minimum salary of a technical person, who is holding a bachelor degree in computers or electronics or mechanical, can be taken as Rs.12,000 per month. Therefore, the income of the graduate in engineering, i.e., B.Tech., cannot be fixed less than Rs.12,000 per month, otherwise it amounts to neglecting the ground reality. Similarly, those who have completed M.Tech, M.C.A., M.B.A., the income of such persons can be fixed little higher, i.e., at Rs.15,000 per month. This will take care of the additional income which they would have earned in course of their service.

52. In view of the above discussion, we are of the considered view that the minimum income of B.E. graduate can be fixed at Rs.12,000 per month.”

7. The correctness of the decision of the Andhra Pradesh High Court in **B. Ramulamma and others v. Venkatesh Bus Union and another** (supra) was challenged before the Apex Court by the insurer

of the motor vehicle. The Special Leave Petition was dismissed by the Apex Court by order passed on 16.7.2010. The Apex Court held that the enhancement granted by the Division Bench of the Andhra Pradesh High Court is based on sound reasons and does not call for any interference.

8. The scales of pay of Government employees in the State of Kerala were revised with effect from 1.7.2009 by G.O.(P).No.85/2011/Fin. dated 26.2.2011 issued pursuant to the recommendations of the 9th pay revision commission. As per the said Government order, the scale of pay of Assistant Engineer in the Public Works Department which was ₹12250-19800 was enhanced to ₹21240-37004 with effect from 1.7.2009. The victims involved in the instant case were fourth semester B.Tech degree students. The accident in the instant case took place on 10.3.2006. In the ordinary course they would have completed their course of study only by the end of June 2008. In such circumstances, we are of the opinion that this court will be perfectly justified in awarding compensation for loss of dependency taking the monthly income of the deceased students as ₹12,000/- as was done by the Andhra Pradesh High Court in **B.Ramulamma & Others v. Venkatesh Bus Union** (supra). The victims in these cases were aged 19 years. In the light of the decision of the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another**

[(2009) 6 SCC 121] the multiplier to be adopted is 18. Though the learned counsel for the appellants contended relying on the decision of the Apex Court in Civil Appeal No.347 of 2014 (**Kanhsingh v. Tukaram** [2015 ACJ 594]) which was decided on 13.1.2015 that the multiplier has to be based on the age of the parents, we are not persuaded to accept the said submission. A three Judge Bench of the Apex Court has in **Munna Lal Jain and Others v. Vipin Kumar Sharma and Others** [JT 2015 (5) SCC 1] which was decided on 15.5.2015 held in categorical terms that the multiplier has to be applied based on the decision of the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** (supra). Going by the principles laid down by the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [supra] as the victims in the instant case were both aged 19 years and were in the age group of 15-20, the multiplier to be adopted is 18. As both the victims were bachelors, 50% of the income thus computed will have to be deducted towards their personal expenses. Thus computed, the loss of dependency would be ₹6,000 X 12 X 18 = ₹12,96,000/-. The Motor Accidents Claims Tribunal has in the instant cases awarded only the sum of ₹3,12,000/- as compensation for loss of dependency. We accordingly award an additional compensation of ₹9,84,000/- to the appellants in each of these appeals as compensation for loss of

dependency over and above the compensation awarded by the Tribunal. Though the learned counsel appearing for the appellants submitted that there has to be an addition of 50% of the income for the purpose of computing future prospects, we are of the opinion that addition can only be to the actual income of the deceased and that principle cannot be applied to a case where, as in the case on hand, for the purpose of computing the loss of dependency, notional income is taken as the basis.

We accordingly hold that the appellants/claimants in both cases are entitled to an additional compensation of ₹9,84,000/- + ₹22,500/-+ ₹90,000/- = ₹10,96,500/-. The respondent insurer in each of these appeals is directed to deposit the said sum together with interest at 9% per annum from the date of petition till the date of deposit, in the Tribunal within two months from today. Upon such deposit being made, the amount deposited shall be released in equal shares to the parents of the victims. No costs.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**