IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

MACA.No. 1597 of 2012 ()

AGAINST THE AWARD IN OPMV 1329/2009 of MACT ALAPPUZHA DATED 23-01-2012

APPELLANT(S)3RD RESPONDENT IN OP(MV) NO.1329/09:

THE NEW INDIA ASSURANCE COMPANY LIMITED
NEW INDIA ASSURANCE COMPANY LTD. RAMU PLAZA
KOVIL ROAD, TRIVANDRUM, REPRESENTED BY ITS MANAGER
REGIONAL OFFICE, KADAMKULATHY TOWERS, M.G. ROAD
ERNAKULAM.

BY ADV. SRI.LAL GEORGE

RESPONDENT(S)/CLAIMANTS AND RESPONDENTS 1 AND 2 IN OP(MV) NO.1329/09:
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1. RADHA
W/O NATARAJAN, KAYALINKKARTH, VARANAD P.O.
CHERTHALA-688543.

2. BINU,
S/O NATARAJAN, KAYALINKKARTH, VARANAD P.O.
CHERTHALA-688543.

3. ASOKAN,
S/O VELAPPAN PILLAI, MANNANVILA VEED T.C.21/1256
IRANIMUTTOM, KARAMANA P.O., NEDUMANGAD
THIRUVANANTHAPURAM-695002.

4. THE MANAGING DIRECTOR,
K.S.R.T.C. THIRUVANANTHAPURAM-695001.

R1,R2 BY ADV. SRI.J.OM PRAKASH
R4 BY ADV. SRI BABU JOSEPH KURUVATHAZHASC,KSRTC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 9/12/2014, THE COURT ON 15-01-2015 DELIVERED THE FOLLOWING:

T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.

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M.A.C.A.No.1597 of 2012

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Dated this the 15th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed the insurance company who was the third respondent in O.P.(MV) No.1329/2009. The claim petition was filed by respondents 1 and 2 who are the legal heirs of the deceased (mother and brother).

2. The accident occurred on 30.10.2009 at about 10.30 p.m. near X-ray Bypass at Cherthala on Alappuzha-Cherthala public road. The deceased was working as General Attender in United Spirit Ltd., Cherthala, at Varanad. He was driving his motor cycle bearing Reg. No.KL-5/4754 and the offending vehicle which is a KSRTC bus bearing Reg. No.KL-15/6892 hit the motor cycle and he died as a consequence of the accident.

3. Before the Tribunal evidence was let in by the claimants and finally the Tribunal awarded a sum of Rs.23,52,380/- with interest at 7.5% per annum from the date of petition till realisation. Exts.A1 to A15 have

been produced in evidence and P.W.1 was examined on the side of the claimants.

4. It is mainly contended by the learned counsel for the appellant Shri Lal George that the deceased being a bachelor, the multiplier ought to have been ascertained on the basis of the age of the mother. Herein, the multiplier adopted is 16 which is not justified. It is contended that the deceased was employed in a private limited company and therefore it cannot be said that he was having any definite future prospects and hence 50% addition to the salary could not have been adopted.

5. Learned counsel for respondents 1 and 2, Shri Omprakash submitted that the assessment of compensation is perfectly justified. He relied upon various judgments of this Court and the Apex Court to contend for the position that the multiplier adopted is the correct one.

6. As regards the details of salary and emoluments of the deceased, Ext.A13 is the document produced before the Tribunal. The same is proved through P.W.1 who is the Personnel Manager of the Company. His evidence will show that the deceased was a permanent employee under the company. In Ext.A13 the salary for the month of October, 2009 has been given and the total amount is Rs.11,187.04 and the incentive for the said month is

Rs.5,378/-. Ext.A12 is produced to prove the date of birth of deceased as 20.9.1976 which is the certified copy of the extract of SSLC book. Ext.A14 certificate is issued by P.W.1. It is certified that the deceased was working as General Attendant in the company and was a permanent employee. His retirement age is 58 and he was drawing a salary of Rs.11,187.04 + Rs.5,378/- as production incentive, during October, 2009. The claimants have also produced details to show the payment of income tax by the deceased for the years 2007-08, 2008-09 and 2009-10. For the assessment year 2007-08, the gross total income of the deceased was Rs.1,57,942, for the assessment year 2008-09 it was Rs.1,62,707/- and for the assessment year 2009-10, it was Rs.2,27,713/-. This is produced to show that the deceased had a steady increase in the salary also.

7. Arguments have been raised as to whether the production incentive can be added to the salary. The evidence of P.W.1 is to the effect that the deceased was working as General Attender in the company in the bottling section. It is stated that he was eligible for production incentive of Rs.5,378/- and it is paid quarterly and the incentive for the month of October paid was Rs.5,378/-. The incentive is in addition to the gross salary paid. His retirement age is 58 and he could have worked in the

company for 25 years more. He was a permanent employee in the company and every five years his salary will be revised as per the long term agreement giving increase to the salary. It is deposed by him in cross examination that the incentive is being paid quarterly on the basis of monthly production. It is stated that Rs.5,378/- was paid as per the incentive scheme and in re-examination he stated that the production incentive shown in Ext.P14 is based on the records kept in their office.

8. Learned counsel for the insurance company objected to the addition of production incentive as part of salary for arriving at the multiplier. According to the learned counsel, the dictum laid down in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC) will show that only in the case of persons having permanent job, salary could be reckoned by adding 50% for future prospects. It is submitted that the said dictum cannot have any application herein, since the deceased was working in a private company. This contention was opposed by the learned counsel for the respondent by pointing out that the evidence of P.W.1 will show that every five year there will be increase in the salary of employees. This is in tune with the long term agreements.

9. We are also of the view that in the light of the evidence of P.W.1

and due to the fact that the deceased was having a permanent job in the company, the addition of 50% in the actual salary towards future prospects cannot be said to be irregular. Only in the case of persons whose salary is fixed and is not subjected to any revision/addition by way of annual increments, in **Sarla Verma's case** (supra) it was held in paragraph 24 that no addition can be made. Herein, such is not the case.

10. Then the question is whether the addition of incentive could be treated as salary. Learned counsel for the respondent relied upon the decision of the Delhi High Court in **National Insurance Company Ltd. v. Neelam and others** (2009 ACJ 992) in this context. In paragraphs 25 and 26, in the light of the documentary evidence to show that production incentive was paid to the deceased which comes to be a little more than Rs.4,000/- per month, it was held that the Tribunal rightly considered the production incentive in the salary of the deceased. Herein also, we have discussed the documentary evidence along with the evidence of P.W.1 which show that the production incentive was an entitlement of the deceased and during the month of October also, such amount was paid. It can only be treated as addition to the salary.

11. In the light of the above, we find that the assessment of monthly

income at Rs.24,281/- after reckoning future prospects, does not call for any interference. 50% has been deducted towards personal and living expenses of the deceased which is also in tune with the judgment in **Sarla Verma's case** (supra).

12. Sixteen has been taken as the multiplier having regard to the age of the deceased. Learned counsel for the appellant submitted that the same is not a correct method. The age of the claimants will have to be reckoned for adopting the multiplier and if so, a reduced multiplier would have been taken.

13. Our attention was invited to the decision of the Apex Court in **U.P. State Road Transport Corporation v. Trilok Chandra** (1996 (2) KLT 218 - SC) wherein, in paragraph 12 reference is made to the decision of the Apex Court in **General Manager, KSRTC v. Susamma Tomas** (1994 (1) KLT 67). Therein, it was mentioned that "the choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher)." The next decision relied upon is **National Insurance Company Ltd. v. Shyam Singh and others** {(2011) 7 SCC 65} wherein the age of the deceased was 19 and the parents were aged 56 and 55. The Apex Court upheld the multiplier adopted as 8 by taking average age of the

parents of the deceased. Reliance is also placed on the decision of a Division Bench of this Court in R.P.No.423/2013 in MACA No.799/2008 in which it was held that the age of the parents is not relevant.

14. It is submitted by the learned counsel for the respondent, by relying upon the decision in **Sarla Verma's case** (supra) and in **Amrit Bhanu Shali and others v. National Insurance Company Ltd. and others** {(2012) 11 SCC 738}, that the age of the deceased alone can be the basis for adopting the multiplier. It is submitted that the decision relied upon by the learned counsel for the appellant, viz. **Trilok Chandra's case** (1996 (2) KLT 218 - SC) came up for consideration in **Sarla Verma's case** (supra). It is further submitted that the decision of a Division Bench of this Court in R.P.No.423/2013 has not been followed by a later Division Bench in **Annamkutty v. United India Insurance Co. Ltd.** (2013 (4) KLT 160), in the light of the various judgments of the Apex Court.

15. We have considered the rival submissions on this point. In **Sarla Verma's case** (supra), in paragraph 19 it has been held that the multiplier should be chosen with reference to the age of the deceased. This view was taken obviously in the light of the fact that there may be different dependents in an application filed for compensation consequent on the death

of the deceased and therefore it may not be proper to fix the multiplier based on the age of the different persons. In paragraphs 15 and 16 of **Amrit Bhanu Shali's case** {(2012) 11 SCC 738}, this view was reiterated. All these decisions have been considered in **Annamkutty's case** (2013 (4) KLT 160). Therein, the Division Bench has considered the dictum laid down in **Trilok Chandra's case** (1996 (2) KLT 218), **Susamma Thomas's case** (1994 (1) KLT 65), **Sarla Verma's case** (2010 (2) KLT 802 - SC) and **Reshmakumari v. Madan Mohan** (2013 (2) KLT 304 - SC) and it was held in paragraph 21 thus:

> "When a subsequent decision of the Apex Court has considered all the aspects including the principles laid down in the earlier decisions of the same Court including the larger bench decisions on this aspect and evolved a new principle, then, they are binding on the subordinate courts. The decision in *Reshmakumari's* case (2013 (2) KLT 304 (SC)), is a three Bench decision of the Supreme Court, which approved the principle evolved in *Sarla Varma's* case (2010 (2) KLT 802 (SC)) where *Trilok Chandra's* case (1996 (2) KLT 218 (SC)) was considered and later, the two Bench decision of the Supreme Court in *Amrit Bhanu Shali's* case (2012 (3) KLT Suppl.37 (SC) = 2012 ACJ 2002) also considered *Trilok Chandra's* case and following *Sarla Varma's* case, held that the age of the deceased alone has to be taken for adopting the multiplier for compensation

> in the case of death. These two subsequent decisions of the Apex Court were not considered by the Division Bench of this Court in *Mariyumma's* case (2013 (3) KLT 595). Under such circumstances and in view of the discussions made above and also in view of the authoritative pronouncement made by the Honourable Supreme Court regarding the multiplier to be adopted in the case of death under S.166 of the Motor Vehicles Act, it is the age of the deceased that has to be taken into consideration and not that of the dependants for determining the multiplier. So, the submission made by the learned counsel for the Insurance Company that when the age of the dependent is higher than the age of the deceased, then the former has to be taken into consideration for determining the multiplier, has no substance and the same is liable to be rejected."

Noticeably, it was held that the decision in **Sarla Verma's case** (supra) has been later approved by a three Judge Bench in **Reshmakumari's case** (2013 (2) KLT 304 - SC). The Bench, therefore, was of the view that the age of the deceased will have to be born in mind while applying the multiplier. In arriving at the said decision, the Division Bench also relied upon a Full Bench decision of this Court in **Raman Gopi v. Kunju Raman Uthaman** (2011 (4) KLT 458 - FB) to the effect that when there is conflict of views by co-equal benches, the later decision will prevail.

16. As far as the said aspect is concerned, it is clear that the decision in **Mariyumma v. Govinda** (2013 (3) KLT 595) has not been followed by the Division Bench in **Annamkutty's case** (2013 (4) KLT 160), based on the decisions of the Apex Court including **Amrit Bhanu Shali's case** {(2012) 11 SCC 738}. Since **Annamkutty's case** (supra) is later in point of time, going by the decision of the Full Bench in **Raman Gopi's case** (supra), we will be justified in adopting the view taken therein.

17. In that view of the matter, we are of the view that the argument raised by the learned counsel for the appellant cannot hold good. Apart from the same, herein the age of the first respondent herein, ie. the mother of the deceased was 50 at the time of filing of the application. The Tribunal has fixed the compensation in the following manner:

Head of claim	***Amount awarded (Rs)***
Transportation charges	500
Funeral expenses	5000
Ambulance charges	1000
Loss of love and affection	10000
Pain and suffering	5000
Loss of dependency	2330976
Total	2352476

Learned counsel for the respondent submitted that towards loss of love and affection and towards pain and suffering, meagre amounts have been granted. We have considered all aspects in detail and are of the view that the total quantum allowed by the Tribunal is a just and fair compensation.

Accordingly, the appeal is dismissed. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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