

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

MACA.No. 181 of 2015

AGAINST THE AWARD IN OPMV 374/2014 of M.A.C.T, KOZHIKODE DATED 16-09-2014

APPELLANTS/PETITIONERS:

1. KESAVAN NAIR AGED 60 YEARS
S/O. GOVINDAN NAIR.
2. LEELA AGED 50 YEARS
W/O. KESAVAN NAIR
BOTH ARE RESIDING AT THAZHATHAYIL HOUSE, P.O.MELUR
CHENGOTTUKAVU, KOYILANDY VIA, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT/3RD RESPONDENT:

THE ORIENTAL INSURANCE CO.LTD.
DO SEEMA BUILDING, G.H.ROAD
OPP. KOTTAPARAMBA HOSPITAL, KOZHIKODE.

BY ADV. SRI.GEORGE CHERIAN (SR.)
BY ADV. SMT.K.S.SANTHI
BY ADV. SMT.LATHA SUSAN CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**

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M.A.C.A.No.181 of 2015

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Dated this the 4th day of August, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P.(MV).No.374 of 2014 on the file of the Motor Accidents Claims Tribunal, Kozhikode. They are the parents of a 21 year old boy by name Arun who sustained fatal injuries in a motor accident that took place at about 6.30 pm on 12.09.2013. The claimants had in the claim petition averred that while the victim of the accident was travelling as pillion rider on a motor bike through Kozhikode-Kannur National Highway, a motor car bearing registration No.KL-58-B-4730 owned by the first respondent, driven by the second respondent and insured by the third respondent (the insurer is the sole respondent in this appeal) collided with the motor bike and in that accident their son sustained serious injuries and while undergoing treatment for the injuries sustained by him at Medical College Hospital, Kozhikode he passed away on 19.09.2013. The claimants had in the claim petition averred that the victim of the accident was employed as a Technician at Ace Motors, Kallai Road, Calicut and was earning Rs.10,000/- per month. They contended that

the accident took place on account of the rash and negligent driving of the motor car by its driver.

2. Though respondents 1 and 2 before the Tribunal were served, they did not enter appearance or file a written statement with the result they were set ex parte. The third respondent insurer entered appearance and filed a written statement admitting the existence of a valid policy of insurance. It however denied its liability to pay compensation on the ground that there was no negligence on the part of the driver of the motor car. It contended that the accident took place on account of the negligence of the rider of the motor bike and that the compensation claimed is excessive and exorbitant.

3. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on either side. However, on the side of the claimants Ext.A1 F.I.Statement, Ext.A2 postmortem report, Ext.A3 family membership certificate and Ext.A4 final report were produced. Relying on the police records, the Tribunal held that the accident took place on account of the negligence of the driver of the motor car namely the second respondent before the Tribunal. The Tribunal thereafter proceeded to award the sum of Rs.7,65,000/- as compensation to the claimants and directed the third respondent insurer to deposit the said

amount 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 this appeal.

4. We heard Smt.Divya A.D., learned counsel appearing for the appellants and Smt.K.S.Santhi, learned counsel appearing for the respondent. We have also gone through the pleadings and the materials on record. The accident took place on 12.09.2013. The victim of the accident died only on 19.09.2013. He had in the motor accident sustained multiple injuries. The post mortem report discloses that the victim died due to traumatic brain injury consistent with road traffic accident. The Motor Accidents Claims Tribunal has however awarded only Rs.5,000/- as compensation under the head pain and suffering. Having regard to the nature of injuries, the period of hospitalisation and the fact that the victim of the accident died only after a week after the accident, we are of the opinion that a minimum amount of Rs.25,000/- should have been awarded as compensation for pain and suffering. We accordingly award a further sum of Rs.20,000/- as compensation under the head pain and suffering.

5. The victim of the accident was aged only 21 years. The claimants are his parents. The Tribunal has by the impugned award awarded only the sum of Rs.25,000/- as compensation under the head loss of love and affection. Having regard to the decision of the Apex Court in **Amrit Bhanu Shali v. National Insurance Co.Ltd.** [(2012) 11 SCC 738] wherein the parents of a 26 year old victim were awarded a sum of Rs.1,00,000/- as compensation for loss of love and affection, we award a further sum of Rs.75,000/- as compensation to the claimants under the head loss of love and affection.

6. The Tribunal has awarded the sum of Rs.7,02,000/- as compensation under the head loss of dependency, taking the monthly income of the deceased as Rs.5,000/- and adding 30% thereof towards future prospects. Reliance was placed on the decision of the Apex Court in **Savitha v. Bindar Singh and others** (2014 ACJ 1261). Though the claimants had contended that the victim of the accident was employed as a Technician in Ace Motors, Kallai Road, Kozhikode earning Rs.10,000/- per month as income, no evidence was adduced to prove either for his

employment or his income. It is for that reason the Tribunal awarded compensation for loss of dependency taking the notional income of the deceased as Rs.5,000/- per month. In the absence of any material before the Tribunal to prove the claimant was employed as a technician and was earning Rs.10,000/- per month, we are of the opinion that no exception can be taken to the finding of the Tribunal as regards the notional income of the deceased. However, we are of the opinion that having regard to the age of the victim 50% of the monthly income should have been taken into account towards future prospects. Computed on that basis, the compensation payable to the claimants under the head loss of dependency will be $\text{Rs.5000/-} + \text{Rs.2,500/-} = \text{Rs.7,500} \times 12 \times 18 \times \frac{1}{2} = \text{Rs.8,10,000/-}$. As stated earlier, the Tribunal has awarded only a sum of Rs.7,02,000/- under that head. We accordingly award a further sum of Rs.1,08,000/- as compensation under the head loss of dependency. The compensation awarded by the Tribunal under other heads does not merit interference.

We accordingly allow the appeal and award a further sum of Rs.2,03,000/- (Rs.1,08,000+Rs.25,000+Rs.20,000/-) as compensation to the appellants/claimants over and above the compensation

awarded by the Motor Accidents Claims Tribunal. The respondent insurer shall deposit the said amount with interest at 9% per annum from the date of petition till the date of application within two months from the date of receipt of a copy of this judgment. Upon such deposit being made, the amount deposited shall be released to the appellants. No costs.

P.N.RAVINDRAN, JUDGE

ANU SIVARAMAN, JUDGE

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