

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

MACA.No. 629 of 2015

AWARD IN OP(MV) 494/2009 of M.A.C.T., PERUMBAVOOR

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APPELLANT/3RD RESPONDENT:

NATIONAL INSURANCE COMPANY LIMITED,
ALUVA NOW REPRESENTED BY ITS MANAGER,
KOCHI REGIONAL OFFICE, OMANA BUILDING,
M.G.ROAD, KOCHI-35.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS:

1. KARTHIYAYANI, W/O.KRISHNAN NAIR @ KRISHNANKUTTY,
KUMBAKAPPILLY HOUSE, MILLUMPADY BHAGOM,
PERUMBAVOOR PIN. 683 320.
2. VIJAYAN, S/O.KRISHNAN NAIR @ KRISHNANKUTTY,
KUMBAKAPPILLY HOUSE, MILLUMPADY BHAGOM,
PERUMBAVOOR PIN. 683 320.
3. RAJU,S/O.KRISHNAN NAIR @ KRISHNANKUTTY,
KUMBAKAPPILLY HOUSE, MILLUMPADY BHAGOM,
PERUMBAVOOR, PIN. 683 320.
4. RAJESWARI, D/O.KRISHNAN NAIR @ KRISHNANKUTTY,
KUMBAKAPPILLY HOUSE, MILLUMPADY BHAGOM,
PERUMBAVOOR, PIN. 683 320.
5. VIJAYASREE, D/O.KRISHNAN NAIR @ KRISHNANKUTTY,
KUMBAKAPPILLY HOUSE, MILLUMPADY BHAGOM,
PERUMBAVOORPIN. 683 320.

R1-R5 BY ADV. SRI.M.P.MOHAMMED ASLAM

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
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M.A.C.A.No.629 of 2015
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Dated this the 22nd day of June, 2015

JUDGMENT

Ravindran, J.

The appellant is the third respondent in O.P.(MV).No.494 of 2009 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. The respondents are the claimants therein. They are the wife and grown up children of late Krishnan Nair who succumbed to the injuries sustained by him in a motor accident that took place at about 9.30 am on 07.04.2009. The claimants had in O.P.(MV). No.494 of 2009 sought a total compensation of Rs.3,00,000/- under various heads. They contended that the deceased, a pedestrian, was knocked down by the motor car bearing registration No.KL 7/BC-302 insured by the appellant and in that accident he sustained serious injuries and while undergoing treatment at Medical Mission Hospital, Kolenchery, succumbed to the injuries sustained by him, at about 1.20 pm on the same day. They contended that the accident took place on account of the rash and negligent driving of the motor car by the second respondent before the Tribunal.

2. The claimants had in the claim petition contended that the deceased was a coconut palm climber aged 62 years and he was earning a monthly income of Rs.7,000/-. Though notice was served, the owner and the driver of the motor car did not enter appearance and they were set ex-parte. The appellant herein entered appearance and filed a written statement admitting the existence of a valid policy of insurance and the accident. It however contended that the deceased was negligent in walking along the road. It also disputed the age and income of the deceased. Before the Motor Accidents Claims Tribunal no oral evidence was adduced on either side. On the side of the claimants, Exts.A1 to A8 were produced and marked by consent and on the side of the respondents, Ext.B1, a copy of the policy was produced. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the negligent driving of the motor car. The Motor Accidents Claims Tribunal assessed the compensation payable under the head loss of dependency taking the age of the deceased as 60, the loss of dependency as Rs.3,000/- and the multiplier as 7. On that basis, the Motor Accidents Claims Tribunal awarded the sum of Rs.2,52,000/- as compensation towards loss of dependency. The Motor Accidents

Claims Tribunal also awarded the sum of Rs.2,43,806/- as compensation under various other heads including loss of consortium and loss of love and affection. The appellant, the insurer of the motor car was directed to deposit the said amount together with interest and costs. The insurer has, aggrieved thereby, filed this appeal.

3. The main question raised in the instant appeal is as regards the multiplier to be applied. It is contended that even in the claim petition the age of the deceased was shown as 62, that the age of the deceased as given in the ration card is 68 years and therefore, the multiplier to be applied is 5 and not 7. It is also contended that the compensation awarded under the head loss of consortium and loss of love and affection is exorbitant.

4. We heard Sri.Mathews Jacob, learned Senior Advocate appearing for the appellant and Sri.M.P.Mohammed Aslam, learned counsel appearing for the respondents. We have also gone through the pleadings and the materials on record as also the impugned judgment. The claimants had in the claim petition stated that deceased was aged 62 years on the date of the accident. The first claimant, the wife of the deceased was aged 55 years. The Tribunal has awarded compensation on the basis that the deceased had

completed 60 years and therefore he falls under the age group 61-65. The multiplier to be applied in cases where the victim is aged between 61-65 years is 7. The said fact is not in dispute. The main argument raised by the learned Senior Advocate appearing for the appellant is that in the ration card issued to the deceased his age is shown as 67 years and if that be so, the multiplier to be applied is 5 and not 7. The appellant did not however take steps to call upon the claimants to produce the ration card issued to the deceased. The appellant did not also furnish the details of the ration card after obtaining the particulars from the Rationing Inspector. In the absence of any material before the Tribunal to show that the deceased was within the age group 66 to 70, we are not persuaded to hold that the Tribunal should have applied the multiplier applicable to a person who has completed 66 years of age. Likewise, we are also of the opinion that the compensation awarded under the heads loss of consortium and loss of love and affection is not exorbitant or excessive. The Apex Court has in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 (SC)) held that in case of death of the husband, the wife should invariably be awarded the sum of Rs.1,00,000/- as compensation under the head loss of consortium. The compensation awarded to the other claimants four in number

towards loss of love and affection (Rs.1,00,000/-) cannot be said to be exorbitant.

We therefore find no good grounds to interfere with the quantum of compensation awarded by the Tribunal. The appeal fails and it is accordingly dismissed, with a direction to the appellant to deposit the amount awarded by the Motor Accidents Claims Tribunal together with interest and costs less the sum of Rs.25,000/- already deposited, expeditiously in any event within two months from today. Upon such deposit being made, the amount deposited shall be released to the claimants in the ratio 60:10:10:10:10. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj