

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

MACA.No. 785 of 2007 ()

AGAINST THE AWARD IN OPMV 377/1999 of M.A.C.T., PALAKKAD DATED 30-08-2006

APPELLANTS/PETITIONERS::

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1. KUTTAN NAIR, S/O.APPUKUTTAN NAIR,
AGED 37 YEARS, KIZHAKKEKALAM HOUSE, CHOZHIYAMKAD
ANCHUMURTHY POST, ALATHUR TALUK, PALAKKAD DISTRICT.
 2. SMT.RADHA, W/O.KUTTAN NAIR,
AGED 34 YEARS, -DO-.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS/RESPONDENTS::

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- * 1. P.T.JOLLY, S/O.THOMAS, AGED 29 YEARS,
PALLIPARAMBU HOUSE, PERUVAM KALAGARA, THRISSUR . (DELETED)
 - * 2. C.A.EDISON XVIII, 387/1,
CHIRIYANKANDATH HOUSE, PUTHAN ANGADI, ARANATTUKARA
THRISSUR. (DELETED)
 3. THE UNITED INDIA INSURANCE COMPANY LTD.,
PARK HOUSE, ROUND NORTH, THRISSUR-680 001.
- * RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT THE RISK
OF THE PETITIONERS AS PER ORDER DATED 20.3.2014 IN IA NO.869/14 IN MACA
NO.785/07.

R3 BY ADV. SRI.K.SANDESH RAJA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vpv

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.
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M.A.C.A.No.785 of 2007
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Dated this the 3rd day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the parents of Pradeesh, a boy aged 10 years who was fatally injured in a motor accident that took place at about 9.45 a.m. on 22.02.1998 while he was walking along the side of the National Highway at Anjumoothymangalam in Palakkad District. They instituted O.P.(M.V.)No.377 of 1999 before the Motor Accidents Claims Tribunal, Palakkad claiming a total sum of Rs.5,08,000/- as compensation under various heads. The third respondent insurer entered appearance and filed a written statement admitting the existence of an insurance policy. It however denied and disputed the case set out by the appellants that the accident took place on account of the rash and negligent driving of the tempo van by the first respondent. The insurer also contended that the compensation claimed under various heads is excessive. Respondents 1 and 2 before the Tribunal who are the driver and owner respectively of the motor vehicle did not enter appearance and they were set exparte. Before the Motor Accidents Claims Tribunal, the first claimant was examined

as PW1 and Exts.A1 to A6 were marked. On the side of the respondents, no evidence oral or documentary was adduced. 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 tempo van by its driver, the first respondent. The Tribunal thereafter awarded the sum of Rs.5,000/- towards funeral expenses, Rs.500/- towards damage to clothing, Rs.5,000/- for pain and suffering and Rs.15,000/- towards compensation for love and affection and Rs.96,000/- towards loss to the estate and loss of dependency, in all aggregating to Rs.1,21,500/-. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

2. We heard Smt.Shamseera C. Ashraf, learned counsel appearing for the appellants and Sri.K.Sandesh Raja, learned counsel appearing for the third respondent. Smt.Shamseera C. Ashraf, learned counsel appearing for the appellants contended relying on the decision of the Apex Court in **Reshma Kumari and Others v. Madan Mohan and Another** [(2013) 9 SCC 65] that the multiplier adopted in the instant case should have been 15 and not 10. Inviting our attention to the decision of the Apex Court in **Kishan Gopal and Another v. Lala and Others** [2014 (1) SCC 244] the learned counsel submitted that

the claimants in that case had also lost their minor son in a motor accident, that the Apex Court has in the said decision awarded the sum of Rs.4,50,000/- as compensation taking the notional income as Rs.30,000/- per annum and had also awarded a sum of Rs.50,000/- as compensation for loss of love and affection and funeral expenses, that the appellants in the instant case are also similarly placed and therefore, there is no reason why compensation as awarded by the Apex Court in **Kishan Gopal and Another v. Lala and Others** [supra] should not be awarded in the instant case as well. Per contra, Sri.K.Sandesh Raja, learned counsel appearing for the third respondent submitted that the compensation awarded by the Motor Accidents Claims Tribunal in the instant case is based on well recognised principles and there is no reason why the impugned award should be modified and the compensation awarded should be enhanced.

3. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The fact that the deceased was aged 10 years at the time of the accident is not in dispute. The deceased son of the appellants was studying in the Vth standard. In the accident that took place on 22.02.1998, he was run over and he died instantaneously. The Tribunal has in the instant case held that

the accident took place solely on account of the negligence of the first respondent driver. The Tribunal has also taken note of the fact that as the road had a width of 7 meters and the deceased boy was walking along the side of the road, the accident could have been averted had the first respondent driven the vehicle with due care and caution. The Apex Court has in similar circumstances in a claim petition filed by the parents of a deceased boy aged 10 years awarded compensation for loss of dependency taking his notional income as Rs.30,000/- per annum and applying the multiplier as 15. The Apex Court also awarded the sum of Rs.50,000/- under the head loss of love and affection, funeral expenses and loss to the estate. The accident in that case took place on 19.07.1992. The accident in the instant case took place on 22.02.1998. In the light of the binding decision of the Apex Court in **Kishan Gopal and Another v. Lala and Others** [supra], we are of the opinion that the appellants who were similarly placed are entitled to be awarded the sum of Rs.4,50,000/- under the head loss of dependency and a sum of Rs.50,000/- under heads loss of love and affection, funeral expenses and loss to the estate. The Motor Accidents Claims Tribunal has by the impugned award awarded only a sum of Rs.1,21,500/-.

We accordingly hold that the appellants are entitled to be paid an

additional amount of Rs.3,78,500/- as compensation over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer does not dispute its liability to pay compensation. In such circumstances, we direct the third respondent insurer to deposit the said sum of Rs.3,78,500/- together with interest at 9% per annum from the date of petition till the date of deposit. Upon such deposit being made, the entire amount shall be released in equal moieties to the appellants.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANU SIVARAMAN
JUDGE**

/true copy/

P.A. To Judge

vpv