

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. 829 of 2015 ()

AGAINST THE AWARD IN OPMV 1463/2013 of M.A.C.T.,KOZHIKODE DATED 19-12-
2014

APPELLANTS/PETITIONERS:

1. MOIDU, S/O.AYAMMEDKUTTY AGED 47 YEARS
2. SUHARA, W/O.MOIDU AGED 42 YEARS
3. MUHAMMED SHADI (MINOR)
AGED 11 YEARS
REPRESENTED BY HIS FATHER AND LEGAL GUARDIAN MOIDU
ALL ARE RESIDING AT VENNAKKATTU MALAYIL HOUSE
P.O.KODUVALLY, KOZHIKODE.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD
DO: SILVER PLAZA BUILDING, I.G.ROAD, KOZHIKODE 673001

BY ADV. SRI.A.A.ZIYAD RAHMAN

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.829 of 2015
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Dated this the 22nd day of June, 2015

JUDGMENT

Anu Sivaraman, J.

The appellants are the claimants in O.P.(MV).No.1463 of 2013 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode. They are the legal heirs of a deceased boy aged 14 years who met with an accident on 15.5.2013. The appellants had in the claim petition stated that while the deceased was collecting newspaper bundles at Koduvally, a tanker lorry bearing registration No.KA-21/D-9149, owned by the first respondent, driven by the second respondent and insured by the third respondent hit the deceased causing serious injuries. He was immediately taken to Medical College Hospital, Kozhikode, but he succumbed to the injuries. The claimants contended that the accident occurred on account of the rash and negligent driving of the lorry by the second respondent.

2. Before the Motor Accidents Claims Tribunal, the first respondent, the owner of the lorry did not enter appearance and he was set ex-parte. The second and third respondents entered appearance. The third respondent filed a written statement admitting

the policy but denying the negligence of the second respondent. Before the Motor Accidents Claims Tribunal, the claimants produced and marked Exts.A1 to A5. The Tribunal awarded the sum of Rs.2,44,500/- as compensation to the claimants along with 8% interest. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

3. We heard Sri.A.V.M.Salahudeen, learned counsel appearing for the appellants and Sri.A.A.Ziyad Rahman, learned counsel appearing for the insurer.

4. The main contention raised by the counsel for the appellants is with regard to the inadequacy of the compensation under the heads loss of love and affection and loss of dependency. It is stated that limiting the amount of compensation on the ground that the deceased was a child is not justifiable in view of the binding judgments of the Hon'ble Apex Court. Per contra, the counsel appearing for the respondent insurer would contend that there was absolutely no material before the Tribunal to grant any amount towards loss of dependency, since the deceased in the instant case was a child aged

14 years. It was also contended that the compensation awarded under the other heads is just and reasonable and no grounds exist for enhancement of the same.

5. The Tribunal had taken the age of the deceased as 13 years relying on the post mortem report and the notional income of the deceased as Rs.30,000/- per annum. After deducting one third of the said amount towards personal expenses and relying on the Second Schedule to the Motor Vehicles Act, an amount of Rs.2,40,000/- was arrived at as the loss of dependency. However, the counsel for the appellant has brought to our notice the decision of the Hon'ble the Supreme Court in **Kishan Gopal v. Lala** [(2014)1 SC 244] where, for the death of a 10 year old child, an amount of Rs.30,000/- was taken as the notional income and applying a multiplier of 15, an amount of Rs.4,50,000/- was granted as compensation towards loss of dependency. It was contended that the applicants are entitled to the same amount in this case also. We find that the decision had been cited before the Tribunal also and is adverted to at paragraph 10 of the Award. Having regard to the facts and circumstances of the instant case, we are of the opinion that the amount of Rs.4,50,000/- is to

awarded under the head loss of dependency in this case also, especially in view of the fact that the appellants had a case before the Tribunal that the deceased was a newspaper boy and an earning member actively contributing to the family income. The appellants would thus be entitled to an enhanced compensation of Rs.2,01,000/- under the head loss of dependency.

6. It is further contended by the counsel for the appellant that going by the decision of the Apex Court in **Amrit Bhanu Shali v. National Insurance Co, Ltd** [(2012)11 SCC 738], an amount of Rs.50,000/- at least ought to have been granted to each of the parents of the deceased child towards compensation for loss of love and affection. Learned counsel appearing for the appellants also submitted that only an amount of Rs.2,000/- was granted as funeral expenses. Going by the decision **Rajesh v. Rajbir Singh** (2013(3) KLT 89) it is argued that an amount of Rs.25,000/- should have to be granted under that head. As regards loss to the estate also, the sum of Rs.2,500/- granted is too low and a reasonable amount of Rs.10,000/- at least, should have to be granted under that head. Further, since the deceased did not die instantaneously, an amount of

Rs.10,000/-ought to have been granted towards pain and suffering.

7. For the loss of love and affection of a son, the Apex Court has in **Amrit Bhanu Shali v. National Insurance Co, Ltd** [(2012)11 SCC 738] granted Rs.50,000/-to each of the parents totaling to an amount of Rs.1,00,000/-. No amount has been granted towards loss of love and affection to the parents in the instant case. We therefore deem it appropriate to award an amount of Rs.1,00,000/- to appellants under that head. Since the deceased did not die instantaneously, and had suffered grievous injuries, he would naturally have undergone severe pain and suffering before he succumbed to the injuries. We are of the opinion that an amount of Rs.10,000/- has to be granted towards compensation for pain and suffering. No amount has been granted under that head by the Tribunal. Towards the head funeral expenses also only an amount of Rs.2000/- has been granted by the Tribunal. Following the decision of the Apex Court in **Rajesh v. Rajbir Singh** (supra) at least an amount of Rs.25,000/- has to be granted under that head. We accordingly award an enhanced amount of Rs.23,000/- under that head.

For the reasons stated above, we hold that the appellants are entitled to an aggregate enhanced compensation of Rs.3,50,500/- as computed above. The said amount will carry interest at 9% from the date of petition till the date of deposit. The third respondent insurer is directed to deposit in the Principal Motor Accidents Claims Tribunal, Kozhikode the aforesaid sum with interest within two months from today. Upon such deposit being made, the amount so deposited shall be disbursed to the appellants as directed by the Tribunal. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj