

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

MACA.No. 1068 of 2007 ()

AGAINST THE AWARD IN OPMV 1164/2000 of I ADDL. MACT, PALAKKAD DATED 30-04-2007

APPELLANTS/PETITIONERS:

- 1. SOBHANA RAMAKRISHNAN
W/O.LATE RAMAKRISHNAN, "SURABHI", KERALA STREET KOPPAM,
PALAKKAD-1.**
- 2. PRANAV.R.,
S/O.LATE RAMAKRISHNAN, "SURABHI", KERALA STREET KOPPAM,
PALAKKAD-1.**

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS/RESPONDENTS:

- 1. K.VENKIDARATHNAM,
S/O.THIRU KUMARASWAMY NAIDU, NO.74, P.M.ROAD,
AMJIKARAI, MADRAS-29. (DELETED)***
- 2. NATIONAL INSURANCE CO.LTD.,
DIRECT AGENTS BRANCH 66 GREANS ROAD, CHENNAI.**
- 3. BALAKRISHNA GUPTHAN,
S/O.GUPTHAN, "CHORANDIYIL", KUMARAMPUTHUR P.O.
PALAKKAD DISTRICT.**
- 4. JANAKI, W/O.BALAKRISHNA GUPTHAN,
"CHORANDIYIL", KUMARAMPUTHUR P.O., PALAKKAD DISTRICT. [DIED]****
- 5. M.ELAMALAI,
675 MOUNT ROAD, AMINJAKKARAI, CHENNAI. (DELETED)***
- 6. RAJALAKSHMI,
W/O.RAMAKRISHNAN, RESHMI NIVAS, DHAIVATHINKARA PO.**
- 7. C.REMANI,
W/O.KRISHNANKUTTY, THOTTINGAL HOUSE, POTTASSERI PO.**

8. C.SAIDHU, W/O RADHAKRISHNAN,
CHORANDIYIL HOUSE, KULAPPADAM PO, KUMARAPUTHUR
MANNARKKAD TALUK.

9. GOPALAKRISHNAN,
CHORANDIYIL HOUSE, KULAPPADAM PO, KUMARAPUTHUR.

10. SUDHARSANAN,
CHORANDIYIL HOUSE, KULAPPADAM P.O., KUMARAPUTHUR.

*RESPONDENTS 1 AND 5 ARE DELETED FROM THE PARTY ARRAY AT THE RISK
THE PETITIONER AS PER ORDER DATED 1.7.2014 IN IA 1799/2014.

**RESPONDENTS 6 TO 10 ARE RECORDED AS THE LEGAL HEIRS OF THE
DECEASED 4TH RESPONDENT AS PER ORDER DATED 16.10.2015 IN MACA
1068/2007.

R2 BY ADVS. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

R3 BY ADV. SRI.SANTHEEP ANKARATH
R6-R8 & R10 BY ADV. SRI.T.A.RAJAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPV

P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.

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M.A.C.A.No.1068 of 2007

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Dated this the 16th day of October, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P.(M.V.)No.1164 of 2000 on the file of the Motor Accidents Claims Tribunal, Palakkad. They are the wife and minor son respectively of late C. Ramakrishnan, who was employed as a Naik in the Military Engineering Service. The husband of the first appellant and the father of the second appellant sustained fatal injuries at about 10 a.m. on 19.6.2000 when the motor bike which he was riding collided with a lorry bearing registration No.TN-02/B-6381, driven by the fifth respondent and owned by the first respondent. The deceased died on the spot. The appellants had in the claim petition prayed for award of the sum of Rs.80,10,000/- as compensation under various heads. They contended that the accident took place solely on account of the rash and negligent driving of the lorry by its driver namely the fifth respondent before the Tribunal.

2. The owner and driver of the lorry, who were joined as respondents 1 and 5 respectively before the Motor Accidents Claims Tribunal, did not enter appearance and file a written statement, with

the result, they were set ex-parte. The insurer of the lorry who was impleaded as the second respondent entered appearance and filed a written statement as also an additional written statement wherein it admitted the fact that the lorry involved in the accident was covered by a valid policy of insurance issued by it and that the driver of the vehicle possessed a driving licence and a badge. It however contended that the accident did not take place on account of the negligence of the driver of the lorry and that the driver of the motor bike namely the deceased, was responsible for the accident. They also contended that the compensation claimed is excessive and exorbitant. The mother and father of the victim of the accident namely the father-in-law and mother-in-law of the first appellant, were joined as respondents 3 and 4 in the claim petition. The third respondent filed a written statement admitting the status of the claimants. But, he contended that he was primarily dependent on the deceased for his livelihood and therefore, he may be awarded the maximum permissible compensation. The mother of the victim did not file a written statement for the reason that shortly after the claim petition was filed, she passed away on 15.05.2001. Thereupon, her other children namely supplemental respondents 6 to 10 before the Tribunal, were impleaded as per order passed on I.A.No.3349 of 2003. They entered appearance through counsel and filed a written statement dated 11.6.2004 wherein the

only averment made was that the maximum possible amount may be allowed to their share. Additional respondents 6 to 10 also admitted the fact that the first claimant before the Motor Accidents Claims Tribunal is the wife and the second claimant is the minor son of their brother Ramakrishnan who succumbed to the injuries sustained by him in the motor accident referred to in the claim petition.

3. Before the Motor Accidents Claims Tribunal, the first claimant examined herself as PW1 and produced and marked Exts.A1 to A7. The third respondent namely the father of the victim was examined as RW1. The Motor Accidents Claims Tribunal considered the rival contentions and the materials on record and held that the accident took place on account of the rash and negligent driving of the lorry by its driver, the fifth respondent. The Tribunal also held relying on Ext.A2 postmortem certificate and Ext.A3 death report that Ramakrishnan died as a result of the injuries suffered by him in a motor accident. The Tribunal thereafter proceeded to award the sum of Rs.9,39,120/- as compensation, comprised of the sum of Rs.8,97,120/- awarded under the head loss of dependency, the sum of Rs.10,000/- awarded as compensation for pain and suffering, Rs.15,000/- awarded under the head loss of consortium, Rs.12,000/- awarded under the head loss of love and affection and Rs.5,000/- awarded under the head funeral and transportation expenses. The Tribunal directed the second

respondent insurer to deposit the said sum of Rs.9,39,120/- with interest at 6% per annum from 6.09.2000 (the date of petition) till realisation along with costs quantified at Rs.5,000/-. The Tribunal further directed that out of the amounts thus deposited, 47% shall be the share of the first claimant (wife of the victim), 40% shall be the share of the second claimant (minor son of the victim), 8% shall be the share of the third respondent before the Tribunal namely the father of the victim and balance 5%, being the share of the fourth respondent (the deceased mother of the victim who died pending the claim petition) shall be the share of compensation payable to additional respondents 6 to 10. The claimants have, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

4. We heard Sri.Deepu Thankan, learned counsel appearing for the appellants, Sri.Mathews Jacob, learned Senior Advocate appearing for the second respondent and Sri.T.A.Rajan, learned counsel appearing for respondents 6 to 8 and 10. The names of respondents 1 and 5 who are the owner and driver respectively of the lorry involved in the accident and insured by the second respondent were deleted from the party array at the risk of the appellants as per order passed on 1.07.2014 on I.A.No.1799 of 2014. Sri.Deepu Thankan, learned counsel appearing for the appellants submitted relying on Ext.A6 salary certificate that the deceased was drawing a gross salary of Rs.8,526/-,

that he was aged only 35 years as on the date of the accident, that the proper multiplier to be applied having regard to the age of the victim of the accident as laid down by the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [(2009) 6 SCC 121] is 15 and therefore, the amount awarded as compensation under the head loss of dependency is liable to be enhanced. Inviting our attention to the decision of the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [supra] as also the decision in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)] learned counsel submitted that future prospects have also to be taken into account for the purpose of awarding compensation for loss of dependency, that in the instant case the victim of the accident who died instantaneously was aged only 35 years and therefore, applying the principles laid down in the aforesaid decisions, 50% of the sum of Rs.8,526/- will also have to be reckoned for the purpose of computing the compensation for loss of dependency. Learned counsel also submitted that the compensation awarded under the heads funeral expenses and transportation charges, loss of love and affection for the minor child and loss of consortium to the wife is meagre and inadequate and is liable to be enhanced in the light of the decisions of the Apex Court including the decision in **Rajesh v. Rajbir Singh** [supra].

5. Per contra, Sri.Mathews Jacob, learned Senior Advocate appearing for the second respondent insurer submitted that though having regard to Ext.A7 and the decisions of the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [supra] and **Rajesh v. Rajbir Singh** [supra] the compensation awarded under the head loss of dependency is liable to be enhanced, no enhancement is called for with the compensation awarded under the other heads. Sri.T.A.Rajan, learned counsel appearing for respondents 6 to 8 and 10 submitted that in the event of the enhanced compensation being awarded, the share of compensation payable to the deceased fourth respondent may be directed to be disbursed to respondents 6 to 10. Learned counsel for respondents 6 to 8 and 10 submitted that as respondents 6 to 10 are the siblings of the victim of the accident, they are entitled to award of compensation under the head loss of love and affection. Learned counsel submitted that the Tribunal has in the instant case awarded 5% of the entire compensation awarded by it to the share of the fourth respondent and permitted additional respondents 6 to 10 to withdraw the said amount and therefore, in the event of enhanced compensation being awarded by this court, 5% of the amount thus awarded may be disbursed to additional respondents 6 to 10.

6. 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 date of birth of the deceased is 10.4.1965. The accident took place on 19.6.2000. He was, on the date of the accident, aged 35 years. The deceased was at the relevant time drawing a gross salary of Rs.8,526/-. The Motor Accidents Claims Tribunal has however taken the monthly income of the deceased as Rs.8,021/- excluding the deductions made towards contribution to the provident fund and group insurance. In our opinion, having regard to the nature of the deductions, such deductions ought not have been taken into account for the purpose of computing the loss of dependency. The deceased was employed in Indian Army. He was earning a regular income and was in regular service. In such circumstances, in the light of the principles laid down by the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [supra] and **Rajesh v. Rajbir Singh** [supra] as the deceased was aged only 35 years, 50% of the monthly income should also be factored into while computing the compensation payable under the head loss of dependency, to provide for future prospects of the deceased.

7. As stated earlier, the deceased was aged only 35 years. The proper multiplier to be applied to compute the amount payable under the head loss of dependency in the case of a person aged 35 years, is

15 as held by the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [supra]. The deceased was admittedly maintaining a family consisting of himself and his minor son. From the evidence on record, it is evident that the number of persons dependent on the deceased was 3. The Apex Court has in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [supra] held that deductions towards personal and living expenses of the deceased should be one-third where the number of dependent family members is 2 to 3. Applying the aforesaid principles, in the instant case, one-third of the monthly income will have to be deducted towards the personal and living expenses of the deceased for the purpose of computing the loss of dependency. The mother of the victim namely the fourth respondent before the Tribunal passed away on 15.05.2001, within one year of the accident. The instant claim petition was filed on 6.9.2000. The father of the victim namely the third respondent in the instant appeal passed away on 20.10.2011. The third respondent had in his written statement averred that he was primarily depending upon his deceased son for his survival. Examined as RW1 he had deposed that he was depending on his other children as well. Having regard to the totality of the aforesaid facts notwithstanding the fact that the number of persons dependent on the deceased was 4, we are of the opinion that only one-third of the

monthly income of the deceased should be deducted towards his personal and living expenses. Thus computed, the compensation payable under the head loss of dependency in the instant case would be $\text{Rs.}8,526 + \text{Rs.}4,263 = \text{Rs.}12,789$ less $\text{Rs.}4,263 = \text{Rs.}8,526 \times 12 \times 15 = \text{Rs.}15,34,680/-$. The Tribunal has awarded only the sum of $\text{Rs.}8,97,120/-$ under that head. Consequently, we award to the appellants/claimants a further sum of $\text{Rs.}6,37,560/-$ under the head loss of dependency.

8. The impugned award discloses that the Tribunal has awarded only the sum of $\text{Rs.}15,000/-$ as compensation under the head loss of consortium to the wife of the victim, $\text{Rs.}12,000/-$ to the minor son of the victim as compensation under the head loss of love and affection and $\text{Rs.}5,000/-$ towards funeral and transportation expenses. As stated earlier, the deceased was aged 35 years on the date of the accident. His wife, the first claimant was aged 30 years. The second claimant, the minor child of the victim was aged three months. The Apex Court has in **Rajesh v. Rajbir Singh** [supra] held that the court should award at least $\text{Rs.}1,00,000/-$ as compensation for loss of consortium. As stated earlier the Tribunal has awarded only the sum of $\text{Rs.}15,000/-$ under that head. Consequently, we award to the first appellant/first claimant a further sum of $\text{Rs.}85,000/-$ as compensation under the head loss of consortium. The Apex Court has in **Kala Devi v. Bhagwan Das**

Chauhan [(2015) 2 SCC 771] awarded to each of the minor children of the deceased victim of a motor accident the sum of Rs.1,00,000/- as compensation under the head loss of love and affection, having regard to the decision of the Apex Court in **Juju Kuruvila and Others v. Kunjujamma Mohan and Others** [(2013) 9 SCC 166]. The accident in that case took place on 15.12.2003. The Apex Court has in **Rajesh v. Rajbir Singh** [supra] awarded to three minor children of the deceased victim of a motor accident a consolidated sum of Rs.1,00,000/- as compensation for loss of love and affection. The accident in that case took place on 5.10.2007. Taking the cue from the aforesaid decisions, we are of the opinion that the sum of Rs.75,000/- can justifiably be awarded as compensation to the second appellant/second claimant under the head loss of love and affection. The Tribunal has by the impugned award, awarded only the sum of Rs.12,000/- under that head. We accordingly award to the second appellant/second claimant a further sum of Rs.63,000/- as compensation under the head loss of love and affection. The Tribunal has awarded only the sum of Rs.5,000/- towards funeral expenses/transportation charges. Though the Apex Court has in **Rajesh v. Rajbir Singh** [supra] held that in the absence of evidence to the contrary for higher expenses atleast an amount of Rs.25,000/- should be awarded as compensation, having regard to the fact that the

accident in the instant case took place seven years prior to the accident involved in **Rajesh v. Rajbir Singh** [supra], we are of the opinion that award of the sum of Rs.10,000/- under that head would be just and proper compensation. We accordingly award a further sum of Rs.5,000/- as compensation under the head funeral expenses. The impugned award discloses that the Tribunal has not awarded any amount as compensation under the head loss to the estate. The deceased was aged 35 years. He was also regularly employed. In such circumstances, we are of the opinion that a nominal amount of Rs.10,000/- should be awarded under the head loss to the estate. We accordingly award a further sum of Rs.10,000/- as compensation under the head loss to the estate.

9. Though the learned counsel appearing for respondents 6 to 8 and 10 submitted that 5% of the amount awarded by this court should be disbursed to them as compensation, having regard to the facts stated above and the further fact that they were not dependent on the deceased, we are of the opinion that the compensation already awarded to them by the Tribunal namely 5% of the entire compensation payable to the fourth respondent, the mother of the victim, towards their share would be just and adequate compensation. That includes a share in the amount of compensation awarded under the head loss of consortium, loss of dependency and other heads. Such

being the situation, we are not persuaded to hold that respondents 6 to 10 are entitled to award any further amount as compensation. The Tribunal has by the impugned award, awarded 5% of the entire amount awarded by it as compensation to the share of the fourth respondent, the mother of the victim and having regard to the fact that respondents 6 to 10 were impleaded as her legal heirs consequent on her death, directed that the said amount be paid to respondents 6 to 10. Under the Hindu Succession Act, 1956, the children of any predeceased son or daughter of a female Hindu is her legal heir. Necessarily therefore, the second appellant will also be entitled to a share in the amount set apart to the share of the deceased fourth respondent. In such circumstances, as respondents 6 to 10 were not dependent on the deceased and had not filed a claim petition on their own and happened to be on record only because they were impleaded as the legal heirs of the deceased fourth respondent, we are not persuaded to award any further amount as compensation to them.

For the reasons stated above, we allow the appeal and award to the appellants/claimants an additional sum of Rs.8,00,560/- as compensation over and above the compensation awarded by the Tribunal. The second respondent insurer shall deposit the said amount together with interest at 9% per annum from the date on which the claim petition was filed, till the date of deposit, within two months from

the date of receipt of a certified copy of this judgment. Upon such deposit being made, one-third of the amount deposited shall be released to the first appellant/first claimant and the entire balance amount shall be kept in fixed deposit in the name of the second appellant/second claimant in a nationalised bank, till he attains the age of majority. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. to Judge

vpv