

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

MACA.No. 1122 of 2015 ()

AGAINST THE AWARD IN OPMV 657/2004 ON THE FILE OF THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, KOLLAM DATED 29-09-2007

APPELLANTS/PETITIONERS 4,2,3 AND 5:

1. VILASANAN, AGED 40 YEARS
H/O.LATE PODIYAMMA, NARIKKALIL PADINJATTATHIL
AMBALATHUMBHAGOM.P.O, PORUVAZHY(VIA) .

2. VISHNU, AGED 14 YEARS
S/O.LATE PODIYAMMA, NARIKKALIL PADINJATTATHIL
AMBALATHUMBHAGOM.P.O
PORUVAZHY(VIA) (MINOR REPRESENTED BY IST APPELLANT
HIS FATHER) .

3. VISAKH, AGED 11½ YEARS
S/O.LATE PODIYAMMA, NARIKKALIL PADINJATTATHIL
AMBALATHUMBHAGOM.P.O
PORUVAZHY(VIA) (MINOR REPRESENTED BY IST APPELLANT
HIS FATHER) .

4. PODIYAN, AGED 63 YEARS
F/O.LATE PODIYAMMA, NARIKKALIL PADINJATTATHIL
AMBALATHUMBHAGOM.P.O, PORUVAZHY(VIA) .

BY ADVS.SRI.PRATHEESH.P
SMT.S.SEETHA
SMT.NIMA JACOB

RESPONDENT/3RD RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LTD,
BRANCH OFFICE P.B.NO.18, VIJAYANAGAR BUILDING
PULAMON.P.O, KOTTARAKKARA-691506.

R1 BY ADV. SRI.P.JACOB MATHEW
R BY SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
AL/-

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

M.A.C.A.No.1122 of 2015

Dated this the 18th day of August 2015

JUDGMENT

Anu Sivaraman, J.

The appellants are the claimants in O.P.(MV) No. 657 of 2004 on the file of the Motor Accidents Claims Tribunal, Kollam. They are the husband, minor children and father of deceased Podiyamma. It was their allegation in the claim petition that on 25.6.2003 the deceased was a passenger in a motor vehicle bearing registration No. K.E.E. 8704 which met with an accident due to the rash and negligent driving of the second respondent its driver. The deceased is said to have later succumbed to her injuries. The claimants stated that the deceased was aged 30 years at the time of her death and was a labourer in a cashew factory earning a monthly income of Rs.2,500/-. The tribunal took the notional income of the deceased as Rs.2,000/- per month and deducting 1/3 of the same towards personal and living expenses, awarded the sum of Rs. 2,71,932/- as compensation for loss of dependency. An amount of Rs.5,000/- was awarded towards pain and suffering, Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards loss of consortium and Rs.5,000/- towards transport to the hospital and funeral expenses. An aggregate sum of Rs.3,02,000/- was thus awarded as compensation to the claimants

who are the mother, children and husband of the deceased. The first claimant, the mother of the deceased passed away after passing of the award and this appeal is filed by the remaining claimants i.e. the husband, minor children and father of the deceased.

2. We heard Smt. Reni Anto, learned counsel appearing for the appellants and Sri. Mathew P.Jacob, learned Senior counsel appearing for the respondents.

3. The learned counsel for the appellant contended that the claim that the deceased who was admittedly a labourer in a cashew factory was earning a monthly income of Rs.2,500/- was only reasonable and should have been accepted by the tribunal. It is further stated that the amounts awarded towards loss of consortium, loss of love and affection, funeral expenses, loss to the estate, medical expenses and pain and suffering are all extremely meagre and are liable to be enhanced. The learned senior counsel appearing for the respondent would submit that though the amounts awarded towards loss of consortium and loss of love and affection appear to be on the lower side, since the accident was in the year 2003, the amount of compensation awarded under the other heads is just and reasonable and is not liable to be interfered with.

4. We have considered the pleadings and materials on record and the contentions advanced on either side. It is not in dispute that the deceased was a labourer aged 30 years at the time of her death. She had two minor children aged 4 years and 1 ½ years at the time of institution of the claim petition. Her parents are also shown as

dependants in the claim petition, though no evidence was adduced to prove that they were depending on her for their livelihood. The age and avocation of the deceased had not been disproved or disputed by the respondents. It is seen from the award that the deceased had succumbed to her injuries after the accident, presumably at the hospital where she was admitted. No amount has been awarded by the tribunal towards medical expenses or for pain and suffering, though an amount of Rs.5,000/- has been awarded under the head transport to hospital and funeral expenses. For loss of consortium and loss of love and affection also, the amounts awarded are extremely low especially, in view of the age of the deceased, her husband and her minor children. Going by the decision in ***Amrit Bhanu Shali and Others v. National Insurance Compaany Limited [(2012) 11 SCC 738]*** as the accident took place in the year 2003, the appellants would be entitled to a minimum amount of Rs.10,000/- towards funeral expenses and a further sum of Rs.5,000/- towards pain and suffering undergone by the appellant. Under the head loss to the estate also, we are of the opinion that a nominal amount of Rs.5,000/- ought to have been awarded to the appellants.

5. The deceased was aged 30 at the time of her death. She had two minor children of tender age. In the above circumstances, going by the decision of the Hon'ble the Supreme Court in ***Rajesh and Others V Rajbir Singh and Others*** (2013) 9 SCC 54 we are of the opinion that a minimum amount of Rs.1,00,000/- ought to have been awarded towards loss of consortium to the first appellant and an amount of

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Rs.1,00,000/- towards loss of love and affection to the minor children. No reasons are brought out for the denial of these amounts by the tribunal. We are therefore, of the opinion that, a further amount of Rs.90,000/- each under these heads is to be awarded to the appellants in the instant case. The compensation awarded by the tribunal under the other heads does not, in our opinion, warrant any interference.

We accordingly allow the appeal in part and award an additional sum of Rs.2,00,000/- 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 sum together with interest at the rate of 9% per annum on the enhanced compensation before the Motor Accidents Claims Tribunal within two months from today. The appellants will not be entitled to interest on the enhanced compensation during the period from 1.1.2005 to 30.3.205. Upon such deposit being made, a sum of Rs. 25,000/- shall be released to the 4th appellant, Rs.50,000/- to the 1st appellant and the balance shall be kept in fixed deposit in the names of appellants 2 and 3 in equal shares till they attain the age of majority. No costs.

Sd/-
P.N.RAVINDRAN
(JUDGE)

Sd/-
ANU SIVARAMAN
(JUDGE)

al/-

True copy

P.S to Judge

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corrected one .