

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

MACA.No. 1358 of 2015 ()

AGAINST THE AWARD IN OP(MV) 1128/2011 of M.A.C.T., PERUMBAVOOR DATED
31-12-2014

APPELLANT(S) :

1. K.P.MATHEW, AGED 59 YEARS,
S/O.PATHROSE, KOTTACKAL HOUSE,
PEECHANIKADU, PULIYANAM P.O., ANGAMALY (VIA),
ERNAKULAM (DIST) .
2. PETER MATHEW, AGED 24 YEARS,
S/O.K.P.MATHEW, KOTTACKAL HOUSE,
PEECHANIKADU, PULIYANAM P.O., ANGAMALY (VIA),
ERNAKULAM (DIST) .
3. ABITHA MATHEW, AGED 21 YERS,
D/O.K.P.MATHEW, KOTTACKAL HOUSE,
PEECHANIKADU, PULIYANAM P.O., ANGAMALY (VIA),
ERNAKULAM (DIST) .

BY ADV. SMT.ANUPAMA JOHNY

RESPONDENT(S) :

1. THE MANAGER,
NATIONAL INSURANCE CO.LTD,
CHERUPUSHPAM BUILDING, MAIN ROAD,
P.B.NO.47, PALAI, KOTTAYAM (DIST)
PIN 683 575.

BY ADV.SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Pn

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.1358 of 2015

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Dated this the 5th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P.(MV)No.1128 of 2011 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. They are the husband, son and daughter respectively of late Salomy who passed away on 13.7.2011 on the way to hospital after she was seriously injured in a motor accident that took place at about 12 noon on that day. It is stated that while she was travelling as pillion rider on the scooter driven by one Sheeja Joy, the claimant in O.P.(MV). No.1430 of 2011 which was also tried and disposed of by the same award, the scooter was knocked down by a tanker lorry bearing registration No.KL-07/AK-6100 driven by the first respondent, owned by the second respondent and insured by the third respondent in the claim petition. The appellants contended that the accident took place on account of the rash and negligent driving by the driver of the tanker lorry. Upon receipt of summons, the third respondent in the claim petition entered appearance and filed a written statement admitting the existence of a valid policy. The insurer however contended that the accident took place on account of the negligent driving of the

scooter by its driver who is the claimant in O.P(M.V).No.1128 of 2011. The insurer also contended that the amount claimed as compensation under various heads is exorbitant and excessive.

2. The Motor Accidents Claims Tribunal considered the rival contentions and held that the accident took place on account of the negligent driving of the tanker lorry by its driver. Before the Motor Accidents Claims Tribunal the appellants had contended that the deceased was aged 45 years and was earning a monthly income of ₹ 6,000/- by working as a coolie and field worker of the Life Insurance Corporation of India. The Motor Accidents Claims Tribunal held that in the absence of any evidence to prove the earning and occupation of the deceased, her monthly income can only be taken as ₹5,000/-. As the deceased had completed 45 years of age, the Tribunal held that she comes within the age group 46-50 and applying the multiplier 13, awarded the sum of ₹6,75,948/- as compensation under the head loss of dependency. The Motor Accidents Claims Tribunal also awarded the sum of ₹1,000/-towards expenses of transport to hospital, ₹25,000/- towards funeral expenses, ₹1,00,000/- towards loss of consortium to the first appellant/husband, ₹20,000/- as compensation under the head loss of love and affection to the children, ₹10,000/- towards pain and suffering and ₹2,500/- towards loss to the estate. The Tribunal thus awarded a total sum of ₹8,35,248/- as compensation under various heads and directed the respondent/insurer to deposit the said

amount together with interest at 8% per annum and costs quantified at ₹74,149.98. The claimants have, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

3. We heard Sri. Gopakumar G., learned counsel appearing for the appellants and Sri. M.A. George, learned counsel appearing for the respondent. Sri. Gopakumar G., learned counsel appearing for the appellants contended that the Tribunal erred in proceeding on the basis that the deceased falls within the age group 46-50 and in adopting the multiplier 13 when there was no evidence to show that she had attained 46 years of age. The learned counsel contended that as it has not been proved that the deceased had attained 46 years of age, the Tribunal ought to have held that she was aged 45 years and awarded compensation on that basis taking the multiplier as 14 as held by the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [(2009) 6 SCC 121]. The learned counsel also contended relying on the decision of the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)], that the Motor Accidents Claims Tribunal ought to have awarded the sum of ₹1,00,000/- as compensation for loss of love and affection to appellants 2 and 3, one among whom is still a minor. The learned counsel also contended that the compensation awarded under the head loss to the estate is meagre and inadequate and is liable to be suitably enhanced.

4. Per contra, learned counsel appearing for the respondent

insurer contended that the Motor Accidents Claims Tribunal has notwithstanding lack of evidence to prove the age, income and occupation of the deceased, awarded compensation under the head loss of dependency taking the monthly income as ₹5,000/-, that the Tribunal has also taken into account future prospects and therefore, no exception can be taken to the impugned award. The learned counsel also contended that the compensation awarded under the other heads cannot be said to be meagre or inadequate, that the Motor Accidents Claims Tribunal has awarded just and fair compensation and no enhancement is called for. The learned counsel also submitted that there is no evidence whatsoever to show that the deceased had not attained the age of 46 years and therefore, the multiplier adopted cannot be said to be erroneous.

5. We have considered the submissions made at the Bar by the learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The appellant had in column 3 of the claim petition averred that the deceased was aged 45 years. The age of the second claimant was given as 19 years and the third claimant as 16 years. Though the second respondent insurer had entered appearance and filed a written statement, it did not deny or dispute the statement in the claim petition that the deceased was aged 45 years at the time of her death. In Ext.A7 postmortem certificate also her age is shown as 45 years. On the basis that she had

completed 45 years, the Tribunal held that she comes within the age-group 46-50. Consequently the Tribunal held that the multiplier applicable is 13. In our opinion, the said finding is erroneous and cannot be sustained. It is only if the claimant had attained the age of 46 years will she fall within the age-group 46-50. In the case of persons who are in the age-group 41-45, the multiplier to be applied is 14 and not 13. Though the learned counsel appearing for the appellant contended that the multiplicand adopted by the Tribunal is on the lower side, in the absence of any evidence to prove that the deceased was earning much more than ₹5,000/- per month, we are not persuaded to interfere with the estimation of income made by the Tribunal. Computed on that basis, the compensation payable to the claimants under the head loss of dependency will be $₹6,500 \times 12 \times 14 \times \frac{2}{3} = ₹7,28,000/-$. The Motor Accidents Claims Tribunal has awarded the sum of ₹6,75,948/- as compensation under that head. Consequently we award to the appellants/claimants an additional sum of ₹52,052/- as compensation under the head loss of dependency over and above the compensation awarded by the Tribunal.

6. The impugned award discloses that the Motor Accidents Claims Tribunal has awarded only the sum of ₹20,000/- as compensation for loss of love and affection, though the Tribunal awarded the sum of ₹1,00,000/- as compensation under the head loss

of consortium to the husband. The Apex Court has in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)] awarded to two minor children a consolidated sum of ₹1,00,000/- as compensation for loss of love and affection. The deceased had two children; a son and a daughter. The son had just attained the age of majority at the time of the accident and the daughter was a minor. Taking the cue from the decision of the Apex Court in **Rajesh v. Rajbir Singh** [supra], we award to appellants 2 and 3 the sum of ₹1,00,000/- as compensation under the head loss of love and affection. Consequently, we hold that appellants 2 and 3 are entitled to be awarded an additional sum of ₹80,000/- as compensation under the head loss of love and affection. The Motor Accidents Claims Tribunal has by the impugned award awarded only the sum of ₹2,500/- as compensation under the head loss to the estate. On a modest estimate, the Tribunal ought to have in our opinion awarded the sum of ₹10,000/- under that head. We accordingly award an additional compensation of ₹7,500/- under that head. The compensation awarded under the other heads is just and fair and does not in our opinion call for any enhancement.

We accordingly hold that the appellants/claimants are entitled to an additional compensation of ₹52,052 =+ ₹80,000 + ₹7,500 = ₹1,39,552/-. The respondent insurer shall deposit the said sum together with interest at 9% per annum from the date of petition till the date of deposit, within two months from today. Upon such deposit

being made, one-half of the amount deposited shall be disbursed to the second appellant and the balance amount shall be kept in fixed deposit in the name of the third appellant to be disbursed to her at the time of her marriage. No costs.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

kp/vpv