

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 28TH DAY OF MAY 2015/7TH JYAISHTA, 1937

MACA.No. 592 of 2009 ()

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AGAINST THE AWARD IN OPMV 267/2006 of MACT PALA DATED 23-05-2008**

APPELLANTS/PETITIONERS 1 - 5 :

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- 1. JISHA PRADEEP, W/O.LATE PRADEEP
PUTHENPURACKAL (H) NEELOR KARA, MATTATHIPARA BHAGOM
KADANADU VILLAGE.**
 - 2. AFIJITH PRADEEP (MINOR)
S/O. LATE PRADEEP , PUTHENPURACKAL (H) NEELOR KARA
MATTATHIPARA BHAGOM, KADANADU VILLAGE.**
 - 3. ANIRUTH PRADEEP (MINOR)
S/O. LATE PRADEEP , PUTHENPURACKAL (H) NEELOR KARA
MATTATHIPARA BHAGOM, KADANADU VILLAGE.
REPRESENTED BY HIS MOTHER & GUARDIAN JISHA PRADEEP**
 - 4. SREEDHARAN, S/O.NARAYANAN
(FATHER OF LATE PRADEEP) PUTHENPURACKAL (H)
NEELOR KARA MATTATHIPARA BHAGOM, KADANADU VILLAGE. .**
 - 5. SUMATHY, W/O. SREEDHARAN
MOTHER OF LATE PRADEEP) PUTHENPURACKAL (H)
NEELOR KARA MATTATHIPARA BHAGOM, KADANADU VILLAGE. .**

BY ADV. SRI.GEORGE MATHEW

RESPONDENTS/RESPONDENTS:

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- 1. RATHEESH P.T., S/O. THANKAPPAN,
PULICKAL HOUSE, MATTATHIPARA PO, MANIAKKUMPARA
KARA, KADANADU VILLAGE.**
 - 2. THE UNITED INDIA INSURANCE CO. LTD,
PRAKASH BUILDING P.B.NO.5, THODUPUZHA 685 584.**

**R1 BY ADV. SRI.BIJUMON JACOB
R2 BY ADV. SRI.P.JACOB MATHEW**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 28-05-2015, 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.592 of 2009
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Dated this the 28th day of May, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are the claimants in O.P.(M.V.)No.267 of 2006 on the file of the Motor Accidents Claims Tribunal, Pala. The first appellant is the wife, appellants 2 and 3 are the minor children and appellants 4 and 5 are the father and mother respectively of late Pradeep who died on 22.2.2006 while under treatment, following the injuries sustained by him in a motor accident that took place at about 7 p.m. on 11.2.2006. The deceased was travelling as a pillion rider on a motor bike that belonged to the first respondent and was insured by the third respondent. It is stated that on account of the negligent driving by the first respondent, the motor bike hit a pedestrian and overturned, as a result of which the deceased was thrown on to the road and sustained serious injuries. The deceased was initially taken to Medical College Hospital, Kottayam and thereafter referred to Brain and Spine Centre, Vaikom where in the course of treatment, he breathed his last at about 3.30 p.m. on 22.2.2006.

2. The appellants had in O.P.(M.V.)No.267 of 2006 sought a total compensation of Rs.8,00,000/-. By award passed on 23.5.2008, the Motor Accidents Claims Tribunal awarded the sum of Rs.4,98,000/- as compensation under various heads and directed the second respondent insurer to deposit the said sum together with interest at 9% per annum from 22.5.2006, the date of petition till realisation along with proportionate costs quantified at Rs.7,500/-. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

3. We heard Sri.George Mathew, learned counsel appearing for the appellants and Sri.Mathews Jacob, learned Senior Counsel appearing for the second respondent insurer. Notice to the first respondent was dispensed with for the reason that the insurer has not disputed its liability to pay compensation. Sri.George Mathew, learned counsel appearing for the appellants contended that the Tribunal erred in deducting $\frac{1}{3}^{\text{rd}}$ of the annual income towards the personal expenses of the deceased. The learned counsel contended that as the claimants, 5 in number, were dependent on the deceased, the Tribunal ought to have deducted only $\frac{1}{4}^{\text{th}}$ of the annual income towards the personal expenses of the deceased. The learned counsel also contended that the deceased was a welder-cum-mechanic and was earning a monthly

income of Rs.8,000/-, that the said plea has not been controverted or proved to be incorrect by the respondents and therefore, the Tribunal ought to have awarded compensation under the head loss of dependency treating the monthly income of the deceased as Rs.8,000/-. Referring to the decision of the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)], the learned counsel contended that the compensation awarded under the heads funeral expenses, loss of love and affection and loss of consortium is liable to be revised and enhanced. The learned counsel also contended that the deceased died ten days after the accident while undergoing treatment, that he had suffered extensive head injuries and therefore, the compensation awarded under the head pain and suffering is also liable to be enhanced.

4. Per contra, Sri.Mathews Jacob, learned Senior Counsel appearing for the second respondent insurer contended that the claimants have not adduced any evidence to show that the monthly income of the deceased was Rs.8,000/- or even the fact that he was working as a welder-cum-mechanic, that no evidence is forthcoming to prove the case set out in the claim petition as regards the employment of the deceased or his monthly income and therefore, no exception can be taken to the award of compensation under the head loss of

dependency. The learned counsel also contended that the appellants have also not proved that appellants 4 and 5 were also dependent on the deceased, that there is no evidence to the effect that appellants 4 and 5 have no other children or other means of income and were totally dependent on the deceased and therefore, deduction of 1/3rd of the annual income towards the personal expenses of the deceased is in order.

5. 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. Though the appellants had in the claim petition claimed that the deceased was a welder by profession earning a monthly income of Rs.8,000/-, no evidence in that regard is forthcoming. The claimants have no case that the deceased was running his own business or trade. Apart from the ipse dixit of the claimants there is no material before this Court to prove either the avocation of the deceased or his monthly income. There is also likewise no evidence to show that appellants 4 and 5 were totally dependent on the deceased for their livelihood. In such circumstances, we are of the opinion that no interference is called for with the award of compensation under the head loss of dependency.

6. The Apex Court has in **Rajesh v. Rajbir Singh** [supra] held

that the court should award atleast Rs.1,00,000/- as compensation for loss of consortium. The first appellant in the instant case is the wife of the deceased. She was aged 24 years on the date of the accident. The Motor Accidents Claims Tribunal has by the impugned award awarded only the sum of Rs.15,000/- under the head loss of consortium. We accordingly award an additional compensation of Rs.85,000/- under the head loss of consortium to the first appellant/first claimant. The Apex Court has in **Rajesh v. Rajbir Singh** [supra] awarded the sum of Rs.1,00,000/- as compensation for loss of love and affection to the minor children. The Motor Accidents Claims Tribunal has in the instant case has awarded the sum of Rs.15,000/- as compensation under the head loss of love and affection. Taking cue from the decision of the Apex Court in **Rajesh v. Rajbir Singh** [supra], we award an additional sum of Rs.85,000/- as compensation under the head loss of love and affection to minor appellants 2 and 3. As stated earlier, the deceased did not die instantaneously. He died ten days after the accident while undergoing treatment in a hospital. The Motor Accidents Claims Tribunal has by the impugned award, awarded only the sum of Rs.15,000/- towards compensation for pain and suffering. Ext.A7 death summary issued from Brain and Spine Centre, Vaikom where the deceased breathed his last discloses that after initial treatment at

Medical College Hospital, Kottayam, he was referred to Brain and Spine Centre, Vaikom for ventilatory support. It is also stated that in view of the severe head injury, tracheostomy was done, the patient was ventilated and administered antepileptics, nootropics, decongestants and antibiotics. Ext.A7 also discloses that he was bleeding from multiple lacerations at the time of admission. We are therefore of the opinion that an additional amount of Rs.10,000/- should be awarded as compensation for pain and suffering. The Motor Accidents Claims Tribunal has by the impugned award, awarded only the sum of Rs.3,000/- towards funeral expenses. The Apex Court has in **Rajesh v. Rajbir Singh** [supra] held that under the head funeral expenses, in the absence of evidence to the contra for higher expenses, atleast an amount of Rs.25,000/- should be awarded. The accident in that case took place on 5.10.2007. In the instant case, the accident took place on 11.2.2006. In such circumstances, applying the principles laid down by the Apex Court we award an additional compensation of Rs.22,000/- under the head funeral expenses. The compensation awarded under the other heads does not in our opinion merit interference.

We accordingly hold that the appellants/claimants are entitled to an additional compensation of Rs.2,02,000/- over and above the

compensation awarded by the Motor Accidents Claims Tribunal. The second respondent insurer shall deposit the additional compensation awarded by this Court together with interest thereon at 9% per annum from the date of petition (22.5.2006) till the date of remittance, within two months from today. The Motor Accidents Claims Tribunal shall upon such deposit, release the sum of Rs.1,00,000/- to the first appellant. The balance amount shall be kept in fixed deposit in a nationalised bank in the names of appellants 2 and 3 till they attain the age of majority. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANU SIVARAMAN
JUDGE**

/TRUE COPY/

P.A. TO JUDGE

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