IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

MACA.No. 2151 of 2015 ()

AGAINST THE AWARD IN OPMV 522/2013 of ADDL. MOTOR ACCIDENTS CLAIMS TRIBUNAL- III, KASARAGOD DATED 27-12-2014

APPELLANT/3RD RESPONDENT:

SHRIRAM GENERAL INSURANCE COMPANY LIMITED,
JAIPUR, NOW REPRESENTED BY ITS LEGAL OFFICER
AZAD TOWER AMMANCOIL CROSS ROAD, KOCHI-35.

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

RESPONDENTS/PETITIONERS:

1. JAMEELA P., W/O.IBRAHIM
   NILESHWARAM HOUSE, BALLAKADAPPURAM P.O, KANHANGAD
   KASARAGOD DISTRICT, PIN - 671 315.

2. IBRAHIM, S/O.ABDRUMAN
   NILESHWARAM HOUSE, BALLAKADAPPURAM P.O, KANHANGAD
   KASARAGOD DISTRICT, PIN - 671 315.

3. MARIYUMMA P.
   D/O.IBRAHIM, NILESHWARAM HOUSE, BALLAKADAPPURAM P.O
   KANHANGAD, KASARAGOD DISTRICT, PIN - 671 315.

4. SABIRA P., D/O.IBRAHIM
   NILESHWARAM HOUSE, BALLAKADAPPURAM P.O, KANHANGAD
   KASARAGOD DISTRICT, PIN - 671 315.

5. AISHA P., D/O.IBRAHIM
   NILESHWARAM HOUSE, BALLAKADAPPURAM P.O, KANHANGAD
   KASARAGOD DISTRICT, PIN - 671 315.

R1-R5 BY ADV. SRI.K.P.HARISH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.R. RAMACHANDRA MENON & ANIL K. NARENDRAN, JJ.

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M.A.C.A. No. 2151 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

RAMACHANDRA MENON,J

The appellant is the Insurance Company, who was the third respondent before the Tribunal. Grievance is with regard to the extent of compensation awarded in respect of the death of a minor boy aged 13 years, occurred on 29.10.2009 pursuant to the fatal injuries sustained by him in a road traffic accident.

2. The factual sequence narrated in the appeal shows that, the boy was proceeding along the road when he was knocked down by the bus bearing No.KL-14C/4358 owned, driven and insured by the 2nd, 1st and 3rd respondents respectively before the Tribunal, which was sought to be compensated by filing a claim petition before the Motor Accidents Claims Tribunal, Kasaragod, by the parents and siblings. Respondents 1 and 2, though filed vakalath, did not file any written statement and there was no contest from their side. The matter was contested by the Insurance Company, raising general grounds with reference to negligence and quantum payable. The evidence consists of Exts.A1 to A4 and nobody was examined from either side. On

evaluation of the facts and figures, the Tribunal arrived at a finding that the accident was caused solely because of the negligence on the part of the driver of the bus and proceeded to award compensation under various heads, granting a total sum of ₹7,14,000/-, which was directed to be satisfied with interest at the rate of 8% per annum from 4.11.2013 i.e., the date of petition till deposit, which in turn is sought to be intercepted by this Court in this appeal filed by the Insurance Company.

3. We heard Sri. Mathews Jacob, the learned Senior Counsel appearing for the Insurance Company.

4. The learned Senior Counsel submits that, amounts have been awarded by the Tribunal without any rhyme or reason. It is stated that the deceased was admittedly a student having no income. Despite this, a sum of ₹4,500/- has been reckoned by the Tribunal as the notional monthly income to work out the loss of dependency, granting a sum of ₹5,40,000/-. It is also stated that, since parents alone could have been considered as dependants, if at all any dependency was there, deduction towards personal expenses ought to have been 50%, instead of 1/3rd. It is also brought to the notice of this Court by the learned

Senior Counsel that, though the notional income specified under the 2nd schedule is ₹50,000/- per year, the Apex Court had occasion to consider the same and it was ordered that in the case of a child, it should be ₹30,000/- as held in **Kishan Gopal and another v. Lala and others** 2013 ACJ 2594. Question to be considered is, whether the award passed by the Tribunal granting compensation under different heads, taken together, could be held as a 'just' award as envisaged under Section 166 of the Motor Vehicles Act or not.

5. The amounts awarded by the Tribunal under different heads as discernible from paragraph 10 are as given below:

1	Compensation for love and affection	₹1,50,000/-
2	Transportation expenses	₹3,000/-
3	Funeral expenses	₹10,000/-
4	Compensation for damage to clothing	₹1,000/-
5	Compensation for pain and suffering	₹10,000/-
6	Compensation for dependency	₹5,40,000/-
	Total	₹7,14,000/-

6. it is true that the deceased was a boy aged only 13 years and was not an earning member as on the date of the accident. In the case of non earning members, the 2nd schedule which was introduced in the statute book with effect from

14.11.1994 stipulates reckoning of a sum of ₹15,000/- per year as the multiplicand. Observing that such stipulation was made about 2 ½ decades back, the Apex Court re-fixed the same when judgment was pronounced in **Kishan Gopal and another v. Lala and others** (supra) fixing the same as ₹30,000/- per annum. It also remains a fact that the accident in the said case was occurred on 19.7.1992, whereas the accident in the instant case was on 29.10.2009. The subsequent decisions rendered by the Supreme Court are also relevant while considering the quantum of compensation payable in respect to the death or disability of minor children who are not earning members.

7. It has been held by the Apex Court as per the decision reported in **Mallikarjun** v. **Divisional Manager, National Insurance Co. Ltd. & Another** [(2014) 14 SCC 396] that in the case of permanent disability sustained to children, the total compensation to be granted under all heads besides the actual expenses incurred, for whole body disability upto 10% is ₹1 lakh; upto 30%, it is ₹3 lakhs, between 30% to 60%, it will be ₹4 lakhs, between 60% to 90%, it will be ₹5 lakhs and above 90%, it will be ₹6 lakhs. In the instant case, admittedly the boy is no

more and the question is whether the dependency worked out by the Tribunal to an extent of ₹5.4 lakhs is within the limits or does it pricks the conscience of this Court so as to make any interference. The answer can only be in the 'negative', as it has to be held that the loss sustained is something more than 90% disability (which by itself would warrant granting of compensation of ₹6 lakhs as observed by the Supreme Court).

8. The issue can be approached in a different angle as well. In the recent decision rendered by the Supreme Court in **Kumari Kiran through her father Harinarayan v. Sajjan Singh & Others** [(2015) 1 SCC 539], it has been held that in the case of children, they cannot be equated to 'non earning members' as envisaged under the statute. In such cases, compensation has to be awarded under 'non pecuniary heads', than under pecuniary heads. It was a case where the children were aged 10 and 13 respectively and the disability caused to them were less than 30%. The Supreme Court found it fit and proper to grant compensation to an extent of ₹3 lakhs under the head permanent disability. Based on the reasoning as mentioned above, the Apex Court also granted compensation for 'pain and suffering' to an

extent of ₹1 lakh, in addition to ₹25,000/- awarded towards the metal agony of parents and a sum of ₹25,000/- towards the future expenses. The Supreme Court has also made it clear that the compensation to be awarded as above shall be in addition to the actual expenses.

9. Coming to the instant case, the Tribunal has awarded compensation towards loss of dependency only to an extent of ₹ 5.4 lakhs. Even though there is no loss of dependency as far as the siblings are concerned, they are required to be compensated in respect of the 'loss of love and affection'. As many as five applicants are there, including the mother and siblings and only a sum of ₹1.5 lakhs have been awarded towards loss of love and affection, which cannot be termed as arbitrary in any manner. Similarly, it is to be noted that only a sum of ₹10,000/- has been awarded by the Tribunal towards funeral expenses, though the quantum payable under this head as per the decision reported in **Rajesh and Others v. Rajbir Singh and Others** 2013(3) KLT 89 (SC), could have been ₹25,000/-. No amount has been awarded towards the mental agony of parents, even though the scheme of awarding the compensation as adopted by the Tribunal is

different from the course stipulated by the Supreme Court in the decision reported in **Kumari Kiran through her father Harinarayan v. Sajjan Singh & Others** (supra).

10. Considering the totality of the facts and circumstances, this Court is of the view that, there need not be any microscopic analysis and the compensation awarded in such cases need not be measured in golden scales. This Court finds it difficult to accept the proposition mooted by the learned Senior Counsel for the appellant that the compensation requires to be scaled down.

There is no merit in the appeal. Interference is declined and the same stands dismissed.

P.R. RAMACHANDRA MENON,
JUDGE

ANIL K. NARENDRAN,
JUDGE

kp/-