

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

MACA.No. 1052 of 2014 ()

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AGAINST THE AWARD IN OPMV 996/2009 of ADDL. MACT, EKM DATED 31-12-2013**

APPELLANT/PETITIONER:

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REJI ABRAHAM, AGED 32 YEARS,
W/O.SONY ANTONY, NOW RESIDING AT FLAT NO.103
BUILDING NO.5, PERSIA CLUSTER INTERNATIONAL CITY
DUBAI, POWER OF ATTORNEY HOLDER ASRI.M.V.ABRAHAM,
AGED 65 YEARS, RESIDING AT L 101, SANTOM,
CHANGAMPUZHA NAGAR, SOUTH KALAMASERY, KOCHI 682 033.**

**BY ADVS.SRI.SHEJI P.ABRAHAM
SRI.O.K.MURALEEDHARAN**

RESPONDENT(S):

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- 1. SMT.PATHU,
W/O.IBRAHIM, KANJIRATHINGAL HOUSE, THRIKKAKKARA,
ERNAKULAM DISTRICT, KOCHI 632 030.**
 - 2. SHIHAB.K.I,
S/O.IBRAHIM K.V, KANJIRATHINGAL HOUSE, THRIKKAKKARA,
ERNAKULAM DISTRICT, KOCHI 632 030.**
 - 3. THE NEW INDIA ASSURANCE COMPANY LIMITED,
2ND FLOOR, RAMAN CENTRE, VALANJAMBALAM,
KOCHI 682 016.**
 - *4. NEW INDIA INSURANCE COMPANY LIMITED,
PALLICHERIL GARDENS, CHANGAMPUZHA NAGAR PO,
KOCHI 682 033. (DELETED)**

*** RESPONDENT NO.4 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANT AS PER ORDER DATED 22.5.14 IN IA NO.1331/14 IN MACA NO.1052/14.**

**R3 BY ADV. SRI.P.JACOB MATHEW
R BY SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

vpv

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

M.A.C.A.No.1052 of 2014
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Dated this the 5th day of August, 2015

JUDGMENT

P.N.Ravindran, J.

The appellant is the claimant in O.P.(M.V.)No.996 of 2009 on the file of the Motor Accidents Claims Tribunal, Ernakulam. She had in O.P.(M.V.)No.996 of 2009 claimed the sum of Rs.27,50,000/- as compensation for the injuries sustained by her in a motor accident which took place at about 11 p.m. on 13.11.2008. She had in the claim petition averred that while she was travelling as a passenger in the motor car bearing registration No.KL-7/W-6933, driven by her father, the motor car bearing registration No.KL-7/AC-4006 owned by the first respondent, driven by the second respondent and insured by the third respondent collided with the rear side of the motor car in which side she was travelling and in that accident she sustained serious injuries and had to undergo treatment at Ernakulam Medical Centre, Palarivattom. She contended that the accident took place on account of the negligence of the second respondent.

2. Respondents 1 and 2 did not enter appearance though they were served with notice. With the result, they were set exparte. The third respondent entered appearance and filed a written statement

admitting the insurance coverage in respect of the offending motor vehicle. The third respondent, the insurer of the offending motor vehicle involved in the accident, contended that the compensation claimed under various heads is exorbitant and excessive. The fourth respondent, the insurer of the motor car in which the claimant was travelling, filed a written statement wherein it admitted the fact that the motor vehicle in which the claimant was travelling was covered by a valid policy of insurance issued by it. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on either side. However on the side of the claimants, Exts.A1 to A7 were produced and marked.

3. The Motor Accidents Claims Tribunal considered the rival contentions and held relying on the Police records that the accident took place on account of the rash and negligent driving of the motor car by the second respondent. The Tribunal thereafter proceeded to award the sum of Rs.1,08,589/- as compensation under various heads and directed the third respondent insurer to deposit the said amount together with interest at 8% per annum from 5.5.2009, the date of the claim petition, till the date of deposit as also proportionate costs. The claimant has, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

4. We heard Sri.Sheji P. Abraham, learned counsel appearing for

the appellant and Sri.Mathews Jacob, learned Senior Advocate appearing for the third respondent. Sri.Sheji P. Abraham, learned counsel appearing for the appellant contended that the Motor Accidents Claims Tribunal erred in holding that the claimant has not proved her monthly income and therefore, she is entitled to be compensated for loss of earnings for a period of three months, taking her notional income as Rs.4,000/-. The learned counsel contended that the Tribunal has failed to take note of Ext.A13 salary certificate which is duly attested by the Vice Consul in the Consulate General of India at Dubai. It was submitted that the employer of the claimant has in Ext.A13 certified that she was working as Human Resources Coordinator from 3.2.2008 to 31.8.2009 on a monthly salary of AED 7500 (Seven Thousand Five Hundred Dirhams only), that the Dubai Chamber of Commerce and Industry has certified the signature of the person who has issued the certificate and that the authenticity and genuineness of the said document was not in dispute and therefore, the claimant is entitled to be awarded compensation for loss of earnings based on the salary mentioned in Ext.A13 certificate. Learned counsel contended that as per the exchange rate then in force, the monthly salary of the claimant was Rs.1,01,250/- and therefore, the claimant is entitled to be compensated for loss of earnings on that basis. Inviting our attention to Ext.A8 air ticket, learned counsel

submitted that the claimant had arrived in India along with her husband on 7.11.2008, that she and her husband had confirmed tickets to fly back to Dubai on 15.11.2008, that on account of the accident that took place on 13.11.2008 they could not go back. Referring to Ext.A8(b) air ticket, learned counsel submitted that the claimant's husband Sony Antony flew back to Sharjah on 22.11.2008. Relying on Ext.A8(a) air ticket, learned counsel for the claimant submitted that the claimant could go back to Sharjah only on 26.1.2009 and therefore, as the claimant has proved that she had to remain in India during November 2008, December 2008 and January 2009 on account of the injuries sustained by her in the accident and was disabled from attending to her work and from earning salary, she is entitled to be compensated for loss of earnings for the said period of three months taking her monthly income as Rs.1,01,250/-. Learned counsel contended that the claimant had sustained extensive injuries including fracture of the mandible, pubic fracture and a fracture of the clavicle, that she had also lost six teeth on the upper jaw and six in the lower jaw and that having regard to the extensive injuries suffered by the claimant, the compensation awarded under the head loss of amenities and for pain and suffering is liable to be enhanced.

5. Per contra, Sri.Mathews Jacob, learned Senior Advocate appearing for the third respondent insurer contended relying on the

decision of a Division Bench of this court in **Valsamma v. Binu Jose** [2014 (1) KLT 10] that the income of a person who is not permanently employed in a foreign country will have to be assessed in the context of Indian standards and therefore, as the appellant/claimant has not proved that she was permanently employed in a foreign country and as the employment was admittedly not permanent, the income which the claimant would have received had she worked in a corresponding post in India alone can be taken into account for the purpose of computing the loss of earnings. Learned Senior Counsel submitted that in the absence of any evidence to show that the claimant would have earned the sum of Rs.1,01,250/- had she worked as a Human Resources Co-ordinator in India, no exception can be taken to the impugned award. Learned Senior Counsel submitted that the amount awarded as compensation under various heads cannot be said to be meagre or inadequate and therefore, no interference is called for.

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 fact that the claimant was employed abroad is not seriously disputed. Ext.A8 air ticket discloses that she and her husband had arrived in India from Dubai on 07.11.2008. Ext.A8 also discloses that they were scheduled to fly back to Dubai on 15.11.2008. The journey could not be performed for

the reason that the claimant met with the accident on 13.11.2008 and was hospitalised till 4.12.2008. Ext.A8 also discloses that the claimant left for Sharjah only on 26.01.2009. The claimant who had to go back to Dubai on 15.11.2008 was constrained to remain in India for a further period of 2½ months. Ext.A13 certificate which is attested by the Vice Consul attached to the Indian Consulate at Dubai discloses that the claimant was employed by EDARA, L.L.C. as Human Resources Co-ordinator during the period from 03.02.2008 till 31.08.2009 on a monthly salary of AED 7500 (Seven Thousand Five Hundred Dirhams only). Going by the then exchange rate her monthly income was Rs.1,01,250/-. Learned Senior Counsel appearing for the third respondent contends, relying on the decision of the Division Bench of this court in **Valsamma v. Binu Jose** (supra) that as the employment at Dubai was not permanent and the income will have to be assessed on the basis of Indian standards, compensation for loss of earnings cannot be awarded relying on Ext.A13.

7. In our considered opinion, there is no merit in the said contention. The decision in **Valsamma v. Binu** (supra) arose out of a claim for compensation for loss of dependency. It was in the said context that this court held that in the case of non-permanent employment abroad, the income will have to be assessed in the context of Indian standards. In the case on hand, the claim is one for

loss of earnings. Ext.A13 discloses that the claimant was employed during the period from 03.02.2008 till 31.08.2008 as Human Resource Coordinator on a monthly salary of AED 7500 Dirhams corresponding to Rs.1,01,250/-. The accident took place on 13.11.2008. As a result of the accident, she could go back to her place of employment only on 26.01.2009. She was constrained to remain India for a period of three months. The Motor Accidents Claims Tribunal has awarded to the claimant compensation for loss of earnings for the said period of three months, taking the monthly income as Rs.4,000/- on the ground that there is no material to prove the income of the claimant. The Tribunal did not at all advert to Ext.A13. Instead, the Tribunal held that Ext.A7, the employment offer letter is only a photostat copy, the original is not forthcoming and therefore, it cannot be received into evidence. In view of the fact that the claim is one for loss of earnings and Ext.A13 certificate proves that the claimant was in employment during the said period, we are of the opinion that the principles laid down by this court in **Valsamma v. Binu** (supra) cannot be pressed into service, to negative such a claim. The principles laid down in **Valsamma v. Binu** (supra) can have application only in fatal accident cases. In respect of claims for compensation under the head loss of earnings, where proof of the actual income of the claimant is available, the principles laid down by this court in **Valsamma v. Binu** (supra) cannot in our opinion

have application. On the materials on record, we are persuaded to hold that the claimant has proved that her monthly income was AED 7500 Dirhams corresponding to Rs.1,01,250/-, and that as a result of the accident, she was denied employment for a period of three months. In such circumstances, we are of the opinion that the claimant is entitled to be compensated for loss of earnings for a period of three months, on the basis that her monthly income is Rs.1,01,250/-. We accordingly award to the claimant the sum of $\text{Rs.1,01,250/-} \times 3 = \text{Rs.3,03,750/-}$ as compensation for loss of earnings for a period of three months. After giving credit to the sum of Rs.12000/- awarded by the Tribunal as compensation, we award a further sum of Rs.2,91,750/- as compensation under that head.

8. The medical records disclose that the claimant had suffered fracture of the clavicle. She had also lost six teeth of the upper jaw and six of the lower jaw. The Tribunal has in the instant case awarded only the sum of Rs.30,000/- under the head pain and suffering and the sum of Rs.20,000/- under the head loss of amenities. Having regard to the seriousness of injuries and the period of hospitalisation (24 days), we are of the opinion that a further sum of Rs.50,000/- should be awarded as compensation for pain and suffering and for loss of amenities. We accordingly award an additional compensation of Rs.50,000/- to the appellant under the head pain and suffering and

loss of amenities. The compensation under the other heads does not in our opinion merit any enhancement.

We accordingly award to the appellant/claimant an additional compensation of Rs.3,41,750/-. The respondent/insurer shall deposit the said amount together with interest at 9% per annum from the date of petition till the date of deposit within two months from the date of receipt of a copy of this judgment. Upon such deposit being made, the amount deposited shall be released to the claimant. The parties shall suffer their respective costs.

Sd/-

P.N.Ravindran, Judge

Sd/-

Anu Sivaraman, Judge

/true copy/

P.A. To Judge

vpv/sj