IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

MACA.No. 432 of 2008 ( )

AGAINST THE AWARD IN OPMV 1273/2002 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL ERNAKULAM DATED 21-07-2007

APPELLANTS/APPELLANTS:

1. CHANDRIKA.P., W/O.LATE RADHAKRISHNAN CHETTIYAR.C., RESIDING AT, ANANTHAPURI M.K.K.NAYAR NAGAR, TRIPUNITHURA.

2. RADHIKA.C., D/O.LATE RADHAKRISHNAN CHETTIYAR.C., RESIDING AT, ANANTHAPURI M.K.K.NAYAR NAGAR, TRIPUNITHURA.

3. RAKESH.R., S/O.LATE RADHAKRISHNAN CHETTIYAR.C., RESIDING AT, ANANTHAPURI M.K.K.NAYAR NAGAR, TRIPUNITHURA.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN

RESPONDENTS/RESPONDENTS :

* 1. GEORGE MATHEW, S/O.MATHEW, RESIDING AT MANIKUZHIL HOUSE NEAR ST.JOSEPH'S SCHOOL, NELLIMATTOM KARA KOTHAMANGALAM.(DELETED)

2. THE UNITED INDIA INSURANCE CO.LTD., M.G.ROAD, ERNAKULAM.

3. THE ORIENTAL INSURANCE CO.LTD., (TRIPUNITHURA BRANCH), METRO PALACE OPP.NORTH RAILWAY STATION, ERNAKULAM.

** 4. MRS.ANNAMMA MATHEW, W/O.K.P.MATHEW, KAIPPILLIL HOUSE, KOTHAMANGALAM.(DELETED)

*(RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY VIDE ORDER DATED 21.1.2015 IN I.A.No 156/2015 IN M.A.C.A. No. 432/2008.)

**(RESPONDENT NO.4 IS DELETED FROM THE PARTY ARRAY VIDE ORDER DAED 19.12.14 IN I.A. No. 3744/14 IN M.A.C.A.No. 432/08)

R,R3 BY ADV. SRI.M.JACOB MURICKAN
R,R1 BY ADV. SRI.MATHEWS JACOB (SR.)
R,R2 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,

M.A.C.A. No.432 of 2008

Dated this the 3rd day of February 2015

JUDGMENT

Ramachandran Nair, J.,

The appellants herein are respectively the widow, daughter and son of Late Sri. Radhakrishnan Chettiyar who died in a motor vehicle accident. The accident occurred on 22.1.2002 at 9.30 a.m near Mount St.Thomas Zero Malabar Church on the Kangarapady Navodaya Road. He was riding his motor cycle bearing Registration No. KL-7/V- 467 and proceeding from South to North when it was hit by a stage carriage bearing Registration No. KL-7/Z 5004 coming from the opposite direction. He was thrown away by the impact of the accident and he sustained very serious injuries. He was immediately admitted in the Ernakulam Medical Centre Hospital and was being treated there. But he succumbed to the injuries on 29.1.2002 i.e. seven days after the accident.

2. The deceased was a qualified Mechanical Engineer in

the Fertilizers and Chemicals Travancore Ltd., Cochin Division, (FACT), Ambalamedu as Assistant Manager (Maintenance-Mechanical). The appellants pleaded that he was drawing a monthly salary at the rate of Rs. 22,831/- and was provided with subsidised food, accommodation and transportation by the Company at the time of his death. He was having definite promotion chance as Deputy Manager w.e.f. 11.3.2004 and hence, his average income claimed is at the rate of Rs. 25,000/- per month.

3. The Tribunal after assessing various aspects awarded an amount of Rs. 5,40,000/- towards total compensation.

4. We heard the learned counsel for the appellant Sri. S.Rajeev and learned Senior Counsel for the 2nd respondent/Insurance Company Sri. Mathews Jacob. The 2nd respondent in the appeal is liable to satisfy the award.

5. Serious disputes have been raised with regard to the fixation of multiplicand as well as the method adopted by the Tribunal in fixing the total compensation. Of course the case is decided prior to the judgment in ***Sarla Verma V. Delhi Transport Corporation (2010(2) KLT 802)***. Evidence was let in by the appellants with regard to the salary obtained and

the scope of promotion of the deceased as per Exts.A12 and A13. Going by Ext.A12, the total salary shown is Rs. 22,831.05/- during the month of January 2002. The said document contains the details of the salary which he had drawn actually. Ext.A13 is the document containing the details of salary he would have drawn once he obtained promotion as Deputy Manager, which is specified as Rs. 28,285.90. The said document will show that going by the scheme existing in the Company, employees on completion of six years in the post of Assistant Manager will be promoted as Deputy Manager in Group III(E4 Scale of Pay Rs. 14500-350-18700).

6. These documents are supported by oral evidence of PW1 who was working as Assistant Manager (HR). His evidence will show that the deceased at the time of his death was working as Assistant Manager (ME) Maintenance. Of course he had detailed in his evidence, that after the recovery from his salary Rs. 5,651/- is the net amount. The Tribunal in the light of the above evidence adopted average salary as Rs. 7,500/- per month and after deduction for personal expenses adopted Rs. 5,000/- as take home salary to award the compensation. Learned counsel for the appellant invited our attention to the evidence of PW1

and contended that even after retirement from the FACT, he had a good chance for getting re-employment. We have gone through the evidence of PW1. It is clear from the evidence that the age of retirement in the Company is 58 and he had chance to get employment even after retirement, going by his qualification.

7. In paragraph 15 of the Award, the tribunal has adopted the multiplier of 11 after reckoning the fact that he would have been promoted as Deputy Manager by 11.3.2004 (even though, the salary shown in Ext.A13 was not accepted) and by relying upon the evidence of PW1 the net salary was adopted as Rs. 7,500/-. 1/3 has been deducted towards his personal expenses and the contribution to the family will therefore be Rs. 5,000/- per mensum. The Tribunal also considered the fact that, since he had only 3½ years left, his income and contribution to the family would have further diminished after retirement. Therefore, a further 1/3 has been deducted after 3½ years and the contribution viz., loss of dependency has been calculated as Rs. 2,10,000/- during the period of service (i.e. 3.5 years) and Rs. 3,00,000/- after his retirement (for 7.5 years).

8. The learned counsel for the appellant relied upon

various decisions of the Apex Court to contend for the position that the fixation of multiplicand in the manner done by the Tribunal is not the correct method. Reliance is placed on the decisions reported in ***K.R.Madhusudhan and Others v. Administrative Officer and another [(2011) (4) SCC 689]*** and ***Puttamma v.Narayana Reddy [(2014) (1) KLT 738]*** as well as the judgment of the Apex Court reported in Rajesh v. Rajbir Singh [(2013 (3) KLT 89 (SC)]. The emphasis given by the learned counsel is regarding the requirement to take the last drawn salary just before the death of the deceased as the pointer for fixing the multiplier. The learned counsel vehementally attacked the method adopted by the Tribunal in adopting a split multiplier also. It is submitted that in all the decisions pointed out above, and rendered by the Apex Court, after considering various aspects the Apex Court has fixed the multiplicand based on the salary of the deceased as on the date of death with suitable additions for future prospects. Therefore, it is submitted that, there is no scope for reducing the multiplicand even after the date of retirement, since the principle should be that the salary as on the date of death alone should come into picture for fixing a true multiplicand.

9. Learned Senior counsel for the Insurance Company submitted that while considering the question as to whether the split multiplier could be adopted, the Apex Court in Puttamma's case (supra) in paragraph 34 has also explained that if there is a specific reason and if evidence is there split multiplier can be adopted. It is submitted that retirement being certain and as the said fact is clear from the evidence of PW1 also, the method adopted by the Tribunal is perfect and justified. It is submitted that the efforts of the Tribunal and this Court should be to arrive at a just and fair compensation and therefore, adopting the last drawn salary for fixing the multiplicand for the multiplier of 11 will result in accepting the fact that he would have gained the said amount even after the attainment of superannuation, which the learned Senior Counsel submitted cannot be accepted. It is also submitted that there is no real evidence to show that even after retirement, he will be gainfully employed and he will get the same amount as salary or remuneration. Therefore, according to the learned Senior Counsel only a notional amount can be taken for the years after he attained the age of 58.

10. We have considered the rival submissions. Of course, the retirement being certain, the question is whether for the

entire period of eleven the multiplicand could be adopted in the same pattern. The Tribunal, considering the fact that, retirement age is at 58, has chosen to adopt split multiplier. Since the retirement being certain, we find that there is no reason to reject the said method. In **Sarla Verma's case**, Their Lordships have relied upon the principles stated in the earlier decision of the the Supreme Court reported in **K.S.R.T.C. V. Susamma Thomas [(1994) (1) KLT 67]** and in paragraph 45 of **Sarla Verma's case** (supra) also, the Apex Court has held that while fixing compensation all the advantages and other factors including the disadvantages could be reckoned by the Tribunal. The Apex Court held as follows:

> *"As against the contention of the appellant that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that, he had not died in the accident, he might have died on account of ill health or other accident, or lost employment or met with some other calamity or disadvantage. The imponderables in life are too many".*

11. As far as the imponderables in this case are concerned since there is evidence that he was to retire at the age of 58, it will be safe to consider the same, for fixing the amount of

contribution to the family. Then the question is whether the multiplicand could be the same for the remaining period after the age of 58 also. In that regard we agree with the view of the Tribunal that the multiplicand cannot be the same. Then the question is how the multiplicand could be arrived at.

12. Learned counsel for the appellant Sri. Rajeev submitted that adoption of the net income by the Tribunal is totally unjustified since out of the total monthly salary he was getting above Rs. 20,000/-, only Rs. 5,000/- is reckoned. Learned counsel also placed for perusal the income tax return showing the payment of income tax for the assessment year 2001-02, going by which, the tax deducted at source is Rs. 6,485/-. Since he was paying income tax during that year, we will have to reckon the same also for fixing the multiplicand. If that be so, by taking Rs. 22,831/- as the monthly salary and after deducting Rs. 6,485/-, the annual income will be Rs. 2,67,487/-. 1/4th will have to be deducted towards personal expenses and hence the balance will be Rs. 2,00,615.25. For the remaining years, viz., 3.5 years, the total amount will be Rs. 7,02,153.375.

13. The difficulty arises in fixing the multiplicand for the remaining years. We have already noted the arguments on

either side. If we accept the arguments of the learned Senior Counsel Sri. Mathews Jacob for the Insurance Company, then, only a notional amount alone can be fixed. But as pointed out by learned counsel Sri. Rajeev, this Court may have to consider future potential of the deceased and the fact that he may get employment and of earning good income as monthly salary. In this context, learned counsel for the appellant invited our attention to paragraph 18 of the judgment reported in ***Puttamma v.Narayana Reddy [(2014) (1) KLT 738]*** wherein the Apex Court has observed as follows:-

> *"Most of the people work even after their retirement to support their children. The longevity of life in India has increased at least upto 69 years: in many cases, people live longer than that. The salaries and cost of this increase rapidly. At a glance, between every 9-10 years they double"*.

14. In paragraph 19 also Their Lordships considered the fact that while determining compensation, it has to be kept in mind the following aspects viz., the Indian background, the Indian culture, Indian legal background and the socio-cultural circumstances existing in India.

15. Of course evidence may not be there as to whether he was actually offered an employment after retirement since he

died more than three years before his retirement and there was no occasion for him to apply at that point of time to get an employment. But for reckoning his chances, it will be safe to go by the evidence of PW1. That his promotion as Deputy Manager on completion of six years, was certain in the light of the evidence of PW1. Going by his evidence, the qualification and experience of the deceased would have led him to accept an employment and then he would have earned much income also. The fact that he may not get the same conditions of service may be another factor which will have to be reckoned. Therefore, while taking into account the imponderables, we will have to bear in mind this factor also. Therefore, we will be justified in adopting a lesser multiplicand in such circumstances. But it cannot be a too low notional income as contended by the learned Senior Counsel for the Insurance Company. Even though evidence was let in to show that he would have earned a promotion and it would result in getting a net salary of Rs. 28,000/- per month, we have not reckoned the said amount in fixing the multiplicand in the light of the principles laid down by **Sarla Verma's case**(supra). The safe pointer therefore, to reckon the multiplicand after retirement, according to us, will be at least 50% of the salary he was drawing at the time of his death. Therefore, we find that it will be safe to adopt an amount of Rs. 10,000/- as the amount which he would have earned after retirement. It is in evidence that his father died in the meanwhile and therefore, the deduction for personal expenses will be 1/3 and if that be so, after deducting 1/3, the total amount will be Rs. 5,99,919.9 which we round off to Rs. Six lakhs.

16. The remaining items of compensation will be for loss of consortium, loss of love and affection, loss of estate as well as for funeral expenses. We notice that for pain and suffering of the deceased Rs. 10,000/- alone was granted.

17. As far as transportation & funeral expenses are concerned, we grant Rs. 25,000/- in the light of the dictum laid down in Rajesh case (supra). As far as pain and suffering is concerned, we notice that he had sustained very serious injuries and was hospitalised for a period of 7 days and therefore, we grant an amount of Rs. 30,000/- for pain and suffering. As far as loss of consortium is concerned the amount is fixed at Rs. 1 lakh. For loss of love and affection, after considering the fact that two children were major at the time of

accident, we grant an amount of Rs. 75,000/- towards the same. As far as loss of estate is concerned, an amount of Rs. 5,000/- was granted and we enhance the same to Rs. 50,000/- since he was having a very good employment.

18. Accordingly, we recompute the compensation in the following manner:

Sl. No.	*Heads*	*Amt.awarded*	*Amt.modified*
1	Transportation & funeral expenses	5000	25000
2	Shock, pain & sufferings	10000	30000
3	Loss of dependency	510000	1302153 (7,02,153+600000)
4	Loss of consortium	5000	100000
5	Loss of love & affection	5000	75000
6	Loss of estate	5000	50000
	Total	540000	15,82,153/- (round off to Rs.15,82,150/-

19. Therefore, the total compensation will be **Rs. 15,82,150**/- (Rupees Fifteen lakh Eighty Two thousand One hundred and fifty only/-) which will carry 9% interest for the enhanced compensation in the light of the dictum laid in **Supe Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009)4 SCC 513]. The appeal is allowed accordingly. The parties will bear their costs in the appeal. We direct the 2nd

respondent Insurance Company to deposit the amount since the 3rd respondent is not liable to satisfy the award. The amount will be deposited within a period of three months and the same will be apportioned among the appellants in the manner in which the Tribunal has directed.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-
P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge

corrected +