

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

MACA.No. 2211 of 2014

AGAINST THE AWARD IN OPMV NO.597/2011 of ADDITIONAL MOTOR
ACCIDENT CLAIMS TRIBUNAL, PALAKKAD DATED 28-02-2014

APPELLANT(S)/3RD RESPONDENT:

UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE, 144-B, KALPANA ROAD,
UDUMALPET, POLLACHI.

BY ADV. SRI.P.V.JYOTHI PRASAD

RESPONDENT(S)/PETITIONERS:

1. SAHEEDA, AGED 43 YEARS,
W/O.ABDUL RAZAD.

2. RUMSHEENA (MINOR), AGED 11 YEARS,
D/O.ABDUL RAZAK,
REPRESENTED BY MOTHER AND NEXT FRIEND SAHEEDA.

3. MUHAMMED IBRAHIM, AGED 86 YEARS,
S/O.NOORMUHAMMED. [EXPIRED]

[IT IS RECORDED THAT RESPONDENTS 1 AND 2 ARE THE LEGAL
HEIRS OF DECEASED THIRD RESPONDENT VIDE ORDER DATED
09.02.2015 IN IA 340/15.] RESPONDENTS 1 TO 3 RESIDING AT
NELLIKKALKADU,
KOKKARNI, MANJALoor P.O.- 678541,
ALATHUR TALUK, PALAKKAD DISTRICT.

R1-R2 BY ADV. SRI.BINOY VASUDEVAN
BY ADV. SMT.P.G.BABITHA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 03-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No. 2211 of 2014

Dated this the 3rd day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The correctness and sustainability of the award passed by the Tribunal in O.P.(MV) No.597 of 2011, especially with regard to the quantum of compensation awarded under the heads of loss of consortium, love and affection and funeral expenses, are under challenge at the instance of the Insurance Company in this appeal.

2. The deceased, the husband of the 1st respondent and father of the 2nd respondent herein, was proceeding on the motorcycle bearing Registration No.KL/49/6891 on 24/3/2011 and when he reached the

place of occurrence by about 5.45 p.m., a tempo trax bearing Registration No.TN/42/X-9419, owned by the 1st respondent, driven by the 2nd respondent and insured by the 3rd respondent (appellant herein) in the O.P. (MV) No.597/2011 came and hit against the motorcycle causing fatal injuries. Immediately the victim was taken to the hospital; but he succumbed to the injuries on the way to the hospital,. This led to the claim petition preferred before the Tribunal by the legal representatives. The 1st respondent chose to remain ex parte. Though the 2nd respondent entered appearance, no written statement was filed. The insurer filed a written statement raising general contentions with regard to the age and other particulars; but admitted the policy of insurance.

3. The evidence adduced before the Tribunal consists only of Exts.A1 to A16 marked on the side of the petitioners/claimants and no evidence, oral or documentary, was adduced on the part of the

respondents. After appreciating the evidence, the Tribunal arrived at a finding that the accident was occurred only due to the negligence on the part of the driver of the tempo trax and the liability was fixed accordingly.

4. The claim of the appellant/Insurance Company was that the deceased was a general worker earning a monthly sum of ₹6,000/- and the compensation was sought to be worked out accordingly. Observing that no positive evidence was adduced before the Tribunal, the monthly income of the deceased was notionally reckoned as ₹4,000/-. Considering the age factor of the deceased and also placing reliance on the verdict passed by the Apex Court in *Sarla Verma v. Delhi Transport Corporation* [2010 (2) KLT 802 (SC)], 15% addition was made with regard to the monthly salary and the multiplicand was adopted accordingly. The loss of dependency was thus worked out, taking a monthly income of ₹4,600/-. After deducting 1/3rd

towards personal expenses and adopting the multiplier '11'; it came to be fixed as ₹4,0,4,800/-. Amounts were awarded towards loss of consortium and loss of care and guidance of the minor children/love and affection as ₹1 lakh each. Placing reliance on the verdict passed by the Apex Court in Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)], amounts were awarded under other relevant heads. Thus, the total compensation awarded by the Tribunal comes to ₹6,46,800/- which was directed to be satisfied with interest at the rate of 9% per annum, which is sought to be intercepted by filing this appeal by the Insurance Company.

5. Heard the learned counsel appearing for the Insurance Company as well as the learned counsel appearing for the respondents/claimants.

6. The nature of the contention raised by the appellant/Insurance Company is that the deceased was aged 55 years at the time of accident and was a general worker by profession. By virtue of the

advancement in age, the efficiency/earning power decreases and as such, it was not correct or proper for the Tribunal to reckon ₹4,600/- as the monthly income for fixing the loss of dependency. If the compensation is worked out taking ₹4,000/- as the monthly income, there is an excess of ₹52,756/- which is sought to be intercepted. It is also contended that the sum of ₹1 lakh each, awarded towards loss of consortium and loss of care and guidance of the minor children/love and affection and the funeral expenses of ₹25,000/- are on the higher side.

7. After hearing both sides, this Court finds that the mere fact that the deceased had crossed the age of 55 years cannot be taken as of much advanced age, so as to involve any substantial variation with regard to the earning capacity as far as a general worker is concerned. Even though it is possible to assume that efficiency would decrease by the advancement of age, the reciprocal aspect is that, by virtue of passing of

years, the possible/probable daily wages may also get increased, which depends upon the various facts and circumstances. Care has to be taken to strike a balance so as to fix 'just' compensation as contemplated under Sec.168 of the Motor Vehicles Act. This exercise has properly been done by the Tribunal and it was accordingly, that the monthly income was notionally fixed as ₹4,600/- after reckoning 15% increase in this regard, which in tune with the observations made by the Apex Court in Sarla Verma's case, with respect to the age factor. It was observed by the Supreme Court in Sarla Verma's case, in the case of persons who are below the age of 40 years, increase by 50% would be justified. In the case of persons between 40 years and 50 years, increase was to be by 30% and in the case of others, increase by 15%. The Tribunal has taken only 15% increase as the deceased was aged 55 years. We do not find anything illegal, improper or irregular in this regard.

8. Coming to the compensation awarded by the Tribunal towards loss of consortium and loss of love and affection/care and guidance of the minor children, it is well founded, on the basis of the ruling of the Apex Court in *Rajesh v. Rajbir Singh* [2013 (3) KLT 89 (SC)]. In the case considered by the Supreme Court, the accident was occurred in 2007; whereas in the instant case, it happened much later in the year 2011. As such, there is nothing wrong in the course adopted by the Tribunal in fixing the compensation under different heads. The expense towards funeral charges may vary depending upon the facts and circumstances and the possible interference, if at all any, could be with regard to the sum awarded by the Tribunal over and above the claim of ₹10,000/- towards funeral expenses. But this Court does not find it necessary to make any interference as the entire facts and circumstances are to be taken as a whole and the only aspect to be considered by this Court is to see

whether it is a 'just award' or not. Considering the plight of the respondents 1 and 2, particularly, the age of the 2nd respondent/minor and the long way she has to travel pursuing her studies, till getting employed, this Court finds that absolutely no variation is required to be made with regard to the award passed by the Tribunal.

Accordingly, interference is declined and the appeal stands dismissed.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge