

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

MACA.No. 2381 of 2014 ()

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AGAINST THE AWARD IN OP(MV) 36/2009 of MOTOR ACCIDENTS CLAIMS
TRIBUNAL,THODUPUZHA DATED 04-02-2014**

APPELLANTS (CLAIMANTS IN THE TRIBUNAL):

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- 1. SHYLAJA, AGED 42 YEARS,
W/O.SOMAN, ALAPPATTU HOUSE, MOOLAMATTOM KARA,
ARAKULAM VILLAGE, THODUPUZHA TALUK.**
 - 2. SARITHA, S/O.SOMAN, AGED 23 YEARS
ALAPPATTU HOUSE, MOOLAMATTOM KARA,
ARAKULAM VILLAGE, THODUPUZHA TALUK.**

**BY ADVS.SRI.S.SACHITHANANDA PAI
SRI.K.V.RAJEEV (PONOTH)**

RESPONDENTS (RESPONDENTS IN THE TRIBUNAL):

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- 1. SUDEVAN, AGED 30 YEARS
S/O.NARAYANAN, PUTHENPURACKAL HOUSE, KARIMBA P.O.
MANNARCADU TALUK, PALAGHAT DIST. (DRIVER), PIN-678 597.**
 - 2. SELVI SIVA SAKTHI DEVI,
D/O.P.S.MURALEEDHARAN, NO.6, 4TH STREET
KONGU NAGAR, TIRUPUR, TAMIL NADU (OWNER), PIN-641 604.**
 - 3. ORIENTAL INDIA INSURANCE CO. LIMITED,
MANGERI BRANCH, MANJERY P.O.
MALAPPURAM DISTRICT (INSURER), PIN-676 121.**
 - 4. SOMAN M.,
MANANGAL HOUSE, PALACHUVADU P.O., PERINTHALMANNA
MALAPPURAM DISTRICT, PIN-679 322.**

**R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P.JACOB MATHEW**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A.No.2381 of 2014

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Dated this the 17th day of June, 2015

JUDGMENT

Anu Sivaraman, J.

This appeal is filed by the claimants in O.P.(MV).No.36 of 2009 against the award dated 4.2.2014 passed by the Motor Accidents Claims Tribunal, Thodupuzha seeking enhancement of the compensation awarded on the death of Saneesh, son of the first appellant and brother of the second appellant, who died as a result of the injuries sustained in a motor accident which occurred on 2.08.2008. The appellants' case in the claim petition was that the deceased was driving an autorickshaw bearing registration No.KL-10F/9451 which was hit by a bus bearing registration No.KL-13L/3525 driven by the first respondent, owned by the second respondent and insured with the third respondent. He suffered grievous injuries and had to be hospitalised for ten days in a private hospital where he succumbed to his injuries. The allegation was that the accident occurred as a result of the rash and negligent driving of the bus bearing registration No.KL-13L/3525 by the first respondent and that the third respondent insurer is liable to indemnify respondents 1 and 2. Respondents 1, 2 and 4 did not appear before the Tribunal. The third respondent appeared and filed a written statement wherein it admitted the insurance but contended that the accident was not the result of the negligence of the first respondent.

2. The Tribunal, after hearing the parties and examining the evidence on record, came to the conclusion that the accident was the result of the rash and negligent driving of the bus by the first respondent and awarded a compensation totaling to Rs.5,51,000/- with interest at 8.5% per annum from 3.2.2009 till realisation and proportionate costs. The income of the deceased, in the absence of reliable evidence produced by the claimants was notionally fixed as Rs.4,000/- per month and an amount of Rs.4,32,000/- was awarded towards loss of dependency. Rs.3,000/- was awarded under the head transportation expenses, Rs.15,000/- for funeral expenses, Rs.1,000/- for damage to clothing, Rs.15,000/- for pain and suffering, Rs.75,000/- for loss of love and affection and Rs.10,000/- towards loss to the estate. The claimants have, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

3. Heard Sri.S.Sachidananda Pai, learned counsel for the appellants and Sri.Mathews Jacob, learned Senior Advocate appearing for the third respondent insurer. It is contended by the learned counsel for the appellants that the compensation awarded towards funeral expenses, pain and suffering and loss of love and affection is too low in the facts and circumstances of the case. Per contra, the learned senior counsel appearing for the third respondent contended that an amount of Rs.4,32,000/- has been granted towards loss of

dependency even in spite of lack of evidence and that the amount awarded as compensation is just and fair. It is brought to our notice that though medical bills were not produced by the claimants before the Tribunal, the Tribunal has observed that the deceased sustained injuries in the accident on 02.08.2008 and was admitted in a private hospital as in-patient where he had undergone treatment for ten days before he succumbed to his injuries, that the nature of the injuries suffered by the deceased are evidently serious enough to warrant hospitalisation and treatment as in-patient for ten days. It is not in dispute that the victim died as a result of the injuries sustained by him in the accident. In the above circumstances, we are of the opinion that even though bills have not been produced, an amount of Rs.15,000/- ought to have been awarded by the Tribunal towards medical expenses and other incidental expenses including bystander's expenses and cost of medicines.

4. It is also urged on behalf of the appellants that the amount of Rs.15,000/- granted towards funeral expenses is low and our attention has been drawn to the decision of the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)]. The Apex Court has in the above decision, held that an amount of Rs.25,000/- should be granted towards funeral expenses in cases of death as a result of the fatal accidents. In the above circumstances, we are of the opinion that an

additional amount of Rs.10,000/- should be granted towards funeral expenses in this case also. It is further urged that an amount of Rs.15,000/- alone has been granted under the head pain and suffering. It is uncontroverted that the deceased had been hospitalized for a period of ten days as a result of the accident before he succumbed to his injuries. In the above circumstances, we are of the opinion that an additional amount of Rs.10,000/- should be granted under the head pain and suffering. The compensation awarded under the other heads does not, according to us, warrant interference. However, we are of the considered view that the interest granted on the entire amount of compensation should be enhanced to 9% in view of the binding decisions of the Honourable the Supreme Court.

5. After the appeal was disposed of by judgment delivered on 15.06.2015, the learned counsel for the appellant sought for a re-hearing of the matter on the ground that the deceased was aged 22 years at the time of his death and the amount of Rs.4,32,000/- granted by the Tribunal towards loss of dependency was without considering the increase in income towards future prospects. He also brought to our notice the decision of the Apex Court in **Rajesh v. Rajbir Singh** [2013(3) KLT 89 (SC)] which has been followed by a three Judges' Bench of the Apex Court in **Munna Lal Jain and another v. Vipin Kumar Sharma and others** (JT 2015(5) SC 1) in

support of his contention that the claimants are entitled to be awarded compensation for loss of dependency calculating the future prospects of the deceased at the rate of 50% of the monthly income reckoned by the Tribunal.

6. Sri. Mathews Jacob, learned Senior Counsel appearing for the third respondent contended that it was stated in the claim petition that the deceased was an auto rickshaw driver earning a monthly income of Rs.3,500/-, but the Tribunal has, without any basis, taken the monthly income of the deceased at Rs.4,000/- and had deducted one half of the said amount towards his personal and living expenses in calculating the loss of dependency. Therefore it is contended that in case increase for future prospects is being granted towards the head loss of dependency, the income has to be taken as Rs.3,500/- per month as stated in the claim petition.

7. We are of the opinion that the contention of the learned Senior Counsel is fair and tenable. In view of the binding decisions of the Apex Court referred to above, we hold that the appellants/claimants are entitled to compensation under the head loss of dependency by taking the income of the deceased as Rs.3,500/- per month and granting an addition of 50% towards future prospects and thereafter deducting one half of the said amount for his personal and living expenses. The monthly income so calculated would be Rs.3500/-

plus 50% thereof (Rs.1,750/-) = Rs.5,250/-. Deducting one half towards personal expenses and adopting the multiplier of 18, the appellant is entitled to a compensation of Rs.5,67,000/- (Rs.5,250 X ½ X 12 X 18) towards loss of dependency. The appellant is in our opinion thus entitled to an additional compensation of Rs.1,70,000/-.

We accordingly modify the award and hold that the appellants shall be entitled to an additional compensation of Rs.1,70,000/-. The total amount of compensation so awarded will carry interest at the rate of 9% per annum from the date of petition till the date of deposit. Since the fourth respondent died on 20.10.2014 during the pendency of this appeal and the appellants are his legal heirs, the entire amount of compensation with interest thereon shall be paid to the appellants in equal shares. The third respondent shall deposit the amount payable pursuant to this judgment and the award passed by the Tribunal less any deposit already made within a period of two months from the date of receipt of a copy of this judgment. The parties shall bear their costs in this court.

Sd/-

P.N.RAVINDRAN
JUDGE

Sd/-

ANU SIVARAMAN
JUDGE

/true copy/

P.A. to Judge

kp/-/vpv