

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

MACA.No. 2383 of 2014 ()

AGAINST THE AWARD IN OPMV 425/2010 of MACT MUVATTUPUZHA DATED 23-01-2014

APPELLANTS/PETITIONERS:

- 1.ABRAHAM @ AVARACHAN AGED 56 YEARS
S/O.SCARIA, CHAYALIL HOUSE, OORAMANA KARA
MEMURY VILLAGE.
2. OMANA, AGED 50 YEARS
W/O.ABRAHAM @ AVARACHAN S/O.SCARIA, CHAYALIL HOUSE
OORAMANA KARA, MEMURY VILLAGE.

BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS/RESPONDENTS:

1. JOHNSON BABY
THURUTHIYIL HOUSE, KADUNGAMANGALAM P.O.
THIRUVANANTHAPURAM, ERNAKULAM DISTRICT, PIN: 682 306.
2. BABY, S/O.KURIAKOSE,
KUZHIVELIPURATHU HOUSE, VADAKODE KARA
THRIKKAKARA VILLAGE, ERNAKULAM DISTRICT, PIN: 682 021.
3. NEW INDIA ASSURANCE COMPANY LIMITED,
741/A, OPPOSITE NEW MUNICIPAL BUS STAND, TRIPUNITHURA
PIN: 682 301.
4. MANOJ, S/O.CHELLAPPAN,
PARAKKUDIYIL HOUSE, THIRUVANIYOOR, ERNAKULAM DISTRICT
PIN; 682 308.
5. DHANYA MANOJ,
W/O.MANOJ, GEETHANGALY HOUSE, VADAVUKODE KARA
VADAVUKODE VILLAGE, PIN: 682 310.
6. NATIONAL INSURANCE COMPANY LIMITED,
KOLANCHERY BRANCH, PIN: 682 311.

R6 BY ADV. SMT.RAJI T.BHASKAR
R3 BY ADV. SRI.P.JAYASANKAR
BY SRI.M.A.GEORGE
BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
= = = = =
M.A.C.A.No.2383 of 2014
= = = = =
Dated this the 25th day of June, 2015

JUDGMENT

Anu Sivaraman, J.

The appellants are the claimants in O.P.(MV).No.425 of 2010 on the file of the Motor Accidents Claims Tribunal, Muvattupuzha. The claim petition was filed seeking compensation for the death of their son Eldhose in a motor accident which occurred on 25.07.2009. While the deceased Eldhose was riding a motor cycle bearing registration No.KL-17/D-7987, a motor car bearing No.KL 39/ A 203 driven by the second respondent, owned by the first respondent and insured with the third respondent, suddenly stopped and the driver opened the front right door of the car. The motor cycle driven by the deceased hit against the door and he fell on the road. Another car bearing registration No.KL-40/183 driven by the fifth respondent, owned by the fourth respondent and insured by the sixth respondent ran over Eldhose and he succumbed to the injuries suffered by him on the way to the hospital.

2. All the respondents appeared before the Tribunal and contested the case. The first and second respondents denied

negligence on the part of the driver of the motor car bearing registration No.KL-39/A 203 and stated that the vehicle was covered by a valid policy of insurance. The third respondent, the insurer of the motor car bearing registration No.KL-39/A 203 admitted the policy but alleged that the accident occurred due to the rashness and negligence of the deceased as well as the fifth respondent, the driver of the motor car bearing registration No.KL-40/183. The fifth respondent in his written statement alleged negligence on the part of the second respondent and the deceased. The existence of valid policies of insurance issued by the third and sixth respondents was admitted. On the side of the appellants, Exts.A1 to A25 were produced and marked, but no oral evidence was adduced. No documentary or oral evidence was adduced on the side of the respondents. After considering the pleadings and evidence on record, the Tribunal held that the accident occurred as a result of the composite negligence of the drivers of both the cars and since valid policies of insurance were in existence, the third and the sixth respondents were held liable to satisfy the award in the ratio 50:50. A total compensation of Rs.6,63,000/- was awarded by the Tribunal to the appellants herein under various heads. Dissatisfied with the quantum of the compensation awarded, the appellants, who are the parents of the deceased, have preferred the

instant appeal.

3. We have heard Sri.Bindu Sasthamangalam, learned counsel appearing for the appellants, Smt.Raji T.Bhaskar, learned counsel appearing for the third respondent insurer as well as Sri.P.Jayasankar, learned counsel appearing for the sixth respondent. It is contended by the learned counsel appearing for the appellants that the Tribunal went wrong in not accepting the case of the appellants that the deceased was a clerk in a micro finance company and was earning a monthly income of Rs.7500/- especially in view of the certificates produced before it to prove the qualifications and earning capacity of the deceased. It was further contended in the light of the decision of Hon'ble the Supreme court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 (SC) that the amounts granted towards funeral expenses, towards loss of love and affection and loss to estate are grossly inadequate. However, it was contended by the counsel appearing for respondents 3 and 6 that no reliable evidence had been adduced before the Tribunal to prove the monthly income of the deceased and that the amount awarded by the Tribunal as compensation is just and fair.

4. Having gone through the pleadings and the materials on record, we find that evidence had been produced before the Tribunal by the appellants to prove the age and qualifications of the deceased.

However, on the ground that no evidence has been adduced to prove the actual income of the deceased at the time of the accident, the Tribunal fixed the notional income of the deceased as Rs.4000/-. A sum of Rs.6,12,000/- was awarded as compensation for loss of dependency taking the monthly income of the deceased as Rs.4000/- and adding 50% towards future prospects. An amount of Rs.10,000/- was granted towards pain and suffering, Rs.5,000/- was awarded towards funeral expenses, Rs.1,000/- transportation expenses, Rs.5000/- was awarded towards loss to the estate and Rs.30,000/- towards loss of old age support.

5. The learned counsel for the appellants contended that the deceased was working as a clerk in a micro finance company at the time of his death. He had earlier worked as an apprentice in the Kerala State Road Transport Corporation from 01.11.2004 to 31.10.2005. He also had passed the National Trade Certificate (Mechanic Motor Vehicle). We are therefore of the opinion that the fixation of Rs.4,000/- as his notional income as on the date of accident in 2009 is not justified especially in view of the fact that even a coolie worker from Karnataka who suffered a motor accident in 2004 has been held to be entitled to reckon a monthly income of Rs.4,500/- for assessing the loss of earning capacity by the Hon'ble the Supreme

Court in **Ramachandrappa v Manager, Royal Sundaram Alliance Insurance Co.Ltd** (2011) 13 SCC 236). We therefore deem it appropriate to take the monthly income of the deceased as Rs.4500/-. Apply 50% addition towards future prospects and deducting 50% towards personal and living expenses since the deceased was a bachelor, the amount to be awarded towards loss of dependency would be $\text{Rs.4,500/-} + \text{Rs.2250/-} \times 12 \times 17 \times \frac{1}{2} = \text{Rs.6,88,500/-}$. Deducting the amount Rs.6,12,000/- already granted by the Tribunal, the appellants would be entitled to an enhanced compensation of Rs.76,500/- under the head loss of dependency.

6. Going by the decision of the Apex Court in **Rajesh v. Rajbir Singh**(supra) a minimum amount of Rs.25,000/- has to be granted towards funeral expenses. Since the Tribunal has granted only an amount of Rs.5,000/- under this head, we are of the opinion that the appellants are entitled to a further amount of Rs.20,000/- towards funeral expenses. The Tribunal has granted an amount of Rs.30,000/- to the claimants who are the parents of the deceased under the head loss of old age support. The Hon'ble the Supreme Court has in **Amrit Bhanu Shali v. National Insurance Co.Ltd.** [(2012) 11 SCC 738] granted an amount of Rs.50,000/- each to the parents of a 26 year old man who died in a motor accident. In the above circumstances, we

hold that the appellants are entitled to an additional sum of Rs.70,000/- over and above the sum of Rs.30,000/- granted by the Tribunal under the head loss of old age support. In the facts and circumstances of the instant case, we are of the opinion that the compensation awarded under other heads by the Tribunal does not warrant interference.

We, therefore allow the appeal and modify the impugned award granting an enhanced compensation of Rs.1,66,500/- to the appellants. The said amount will carry interest at 9% from the date of petition till the date of deposit. Respondents 3 and 6 insurers are directed to deposit the enhanced compensation awarded by this court with interest thereon in the ratio 1:1 before the Tribunal, within two months from today. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj