

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

MACA.No. 2399 of 2014 ()

AGAINST THE AWARD IN OPMV 305/2012 of MACT,THODUPUZHA

APPELLANTS:

1. BABU, S/O.MADHAVAN,
MANETH HOUSE,
SANYASIODA KARA & POST,
PAMPADUMPARA VILLAGE.
2. BINDHU, D/O.BABU,
MANETH HOUSE,
SANYASIODA KARA & POST,
PAMPADUMPARA VILLAGE.,
3. SANDHYA, D/O.BABU
MANETH HOUSE,
SANYASIODA KARA & POST,
PAMPADUMPARA VILLAGE.
4. LAKSHMI (MINOR)
D/O.BABU,
MANETH HOUSE,
SANYASIODA KARA & POST,
PAMPADUMPARA VILLAGE.
5. ASWATHI (MINOR)
D/O.BABU,
MANETH HOUSE,
SANYASIODA KARA & POST,
PAMPADUMPARA VILLAGE.

(MINORS 4 AND 5 REPRESENTED BY
THEIR FATHER AND NATURAL GUARDIAN
APPELLANT NO.1, BABU.)

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZH

RESPONDENTS:

1. VIKRAMANPILLA,
S/O.RAGHAVANPILLA,
PARVATHYMANDIRAM HOUSE,
SANYASIODA KARA & POST,
PAMPADUMPARA VILLAGE.
2. CHOLA MS GENERAL INSURANCE COM.LTD.,
REPRESENTED BY ITS MANAGER
2ND FLOOR, ACCL ESTATE,
CHITTOOR ROAD, COCHIN - 11.

R2 BY ADV. SRI.MATHEWS JACOB (SR.)
R2 BY ADV. SRI.P.JACOB MATHEW
R2 BY ADV. SMT.PREETHY R. NAIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 18-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A.No.2399 of 2014

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Dated this the 18th day of August, 2015

JUDGMENT

Anu Sivaraman, J.

The appellants are the claimants in O.P.(MV) No.305 of 2012 on the file of the Motor Accidents Claims Tribunal, Thodupuzha. They are the husband and four daughters respectively of Smt.Valsalakumary who succumbed to the injuries sustained by her in a motor accident that took place on 26.01.2012. The appellants had in the claim petitioner averred that while Smt.Valsalakumary was travelling in the auto-rickshaw bearing registration No.KL-37/4998 owned and driven by the first respondent, it hit against an electricity post and overturned and in that accident she sustained grievous injuries. Immediately after the accident, Smt.Valsalakumary was taken to St.John's Hospital, Kattappana and from there to Medical College Hospital, Kottayam where she succumbed to the injuries sustained by her on 19.02.2012. The appellants contended that the accident took place solely on account of the rash and negligent driving of the auto-rickshaw by its owner-cum-driver, the first respondent. They also contended that the auto-rickshaw involved in the accident was on the relevant date

covered by a policy of insurance issued by the second respondent insurer and therefore, the second respondent is liable to indemnify the first respondent. The appellants had also averred that the deceased was employed as a part-time sweeper at Government Homoeo Hospital, Chottupara and earning a monthly income of Rs.8,000/- and claimed a total sum of Rs.24,00,000/- as compensation.

2. The first respondent in the claim petition, namely, the owner-cum-driver of the auto-rickshaw did not enter appearance, though notice was served on him and consequently he was set ex parte. The second respondent, the insurer of the auto-rickshaw, entered appearance and filed a written statement admitting the insurance coverage of the auto-rickshaw. It however contended that the first respondent was not negligent and disputed the age, income and occupation of the deceased as well as the quantum of the compensation claimed in the petition. It further contended that the victim of the accident did not die on account of the injuries sustained by her in the accident, that she had earlier undergone a major surgery and was not keeping good health, that the claimants had suppressed the said fact and therefore, they are not entitled to claim any compensation.

3. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on both sides. However, on the side of the claimants, Exts.A1 to A15 were produced and marked. The Motor Accidents Claims Tribunal considered the rival contentions and the materials on record and held, relying on the police records, namely, Ext.A1 FIR and Ext.A3 charge sheet, that the accident occurred on account of the rash and negligent driving of the auto-rickshaw by its driver the first respondent. Relying on Ext.A2 postmortem certificate, the Tribunal held that Smt.Valsalakumary died on account of the grievous injuries sustained by her in the motor accident. The Tribunal, thereafter proceeded to award the sum of Rs.11,75,565/- as compensation under various heads and directed the second respondent insurer to deposit the said amount together with interest at 8.5% per annum from 07.08.2012, the date of the claim petition till the date of realisation with proportionate costs. The claimants have, dissatisfied with the quantum of compensation awarded by the Tribunal, filed this appeal.

4. We heard Sri.Mathew John, learned counsel appearing for the appellants and Sri.Mathews Jacob, learned senior counsel appearing for the second respondent insurer. The learned counsel appearing for the appellants contended, relying on the decision of the Apex Court in

Rajesh v.Rajbir Singh [2013(3) KLT 89 (SC)], that the compensation awarded by the Tribunal under the heads loss of consortium and loss of love and affection is meagre and inadequate and is liable to be enhanced. The learned counsel also submitted that the compensation awarded under the head pain and suffering and towards funeral expenses is also meagre and inadequate and is therefore liable to be enhanced. Sri.Mathews Jacob, learned senior counsel appearing for the second respondent insurer fairly conceded that the amounts awarded as compensation under the heads loss of consortium and loss of love and affection are on the lower side, having regard to the decision of the Apex Court in **Rajesh v.Rajbir Singh** (supra). The learned counsel, however, submitted that no exception can be taken to the compensation awarded under the other heads and that under other heads, just and fair compensation has been awarded.

5. We have considered the submissions made at the Bar by the learned counsel appearing on either side. The deceased was aged 49 years at the time of the accident. She had left behind four daughters out of whom two were minors on the date of the accident and her death. The Motor Accidents Claims Tribunal has in the instant case awarded only the sum of Rs.1,20,000/- under the head loss of love

and affection. Having regard to the decision of the Apex Court in **Rajesh v.Rajbir Singh** (supra), we are of the opinion that, a minimum amount of Rs.50,000/- should be awarded to each of the four daughters of the victim of the accident under the head loss of love and affection. We accordingly award a further sum of Rs.80,000/- to appellants 2 to 5 (claimants 2 to 5) under the head loss of love and affection. The Apex Court has in **Rajesh v.Rajbir Singh** (supra) held that a minimum amount of Rs.25,000/- should be awarded as compensation towards funeral expenses. The Tribunal has in the instant case awarded only the sum of Rs.20,000/-. We accordingly award a further sum of Rs.5,000/- as compensation under the head funeral expenses. The Apex Court has in the aforesaid decision also held that in the event of death of the spouse, the surviving spouse should be awarded a minimum amount of Rs.1,00,000/- as compensation under the head loss of consortium. The Tribunal has in the instant case awarded only the sum of Rs.40,000/- under that head to the husband of the victim of the accident namely the first appellant. We accordingly award a further sum of Rs.60,000/- as compensation under that head. The compensation awarded under the other heads including loss of dependency is, in our opinion, just and fair and does

not merit interference.

We accordingly award to the appellants/claimants an additional compensation of Rs.1,45,000/- (Rs.80,000/-+Rs.5,000/-+Rs.60000/- =Rs.1,45,000/-) over and above the compensation awarded by the Motor Accidents Claims Tribunal. The second respondent insurer shall deposit the said sum together with interest at 9% per annum from the date of petition (07.08.2012) till the date of deposit, within two months from the date of receipt of a certified copy of this judgment. On such deposit being made, 1/5th of the amount deposited shall be released to each of the claimants other than claimants 4 and 5. The share of compensation payable to claimants 4 and 5 shall be kept in separate fixed deposits in their respective names in a nationalised bank till they attain the age of majority and shall be paid over to them after they attain the age of majority. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj