

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

MACA.No. 2598 of 2014 ()

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AGAINST THE AWARD IN OPMV 905/2009 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,
PERUMBAVOOR DATED 31-03-2014**

APPELLANTS/PETITIONERS 1, 2, 4 IN OP:

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- 1. RAHMATH, W/O.SAITH, PAZHAYATHODIYIL HOUSE,
KAITHARAM P.O., N.PARAVOOR, PIN: 683 519.**
 - 2. NOUFIA (MINOR) D/O.SAITH,
PAZHAYATHODIYIL HOUSE, KAITHARAM P.O., N.PARAVUR
PIN: 683 519, REP.BY HER MOTHER AND NEXT FRIEND
RAHMATH W/O.SAITH, PAZHAYATHODIYIL HOUSE,
KAITHARAM P.O., N.PARAVOOR, PIN: 683 519.**
 - 3. AYSHA,
W/O.MOIDEEN, PAZHAYATHODIYIL HOUSE, KAITHARAM P.O.
N.PARAVOOR, PIN: 683 519.**

**BY ADVS.SRI.K.A.SHAMSUDEEN
SRI.K.J.MOHAMMED ANZAR**

RESPONDENTS/RESPONDENTS:

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- 1. BIJU GEORGE
PAREKKATTIL HOUSE, PULIYANAM P.O., PIN: 683 572
PEECHANIKKAD, ANGAMALI.**
 - 2. P.D.NIKHIL, S/O.JOY,
PAREKKATTU HOUSE, MANIKKAMANGALAM, PIN: 683 574.**
 - 3. SREE RAM GENERAL INSURANCE CO. LTD.,
E.8, RIICO, INDUSTRIAL AREA,
SITAPURA, JAIPUR, RAJASTHAN - 302 022.**

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

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 01-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VPV

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A.No.2598 of 2014

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Dated this the 1st day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are claimants 1, 2 and 4 in O.P.(M.V.)No.905 of 2009 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. They are the wife, minor son and mother respectively of late Saith, a construction worker aged 31 years, who sustained serious injuries in a motor accident that took place at about 7.30 p.m. on 19.5.2009 and died on the way to the hospital. The claim petition was filed by the appellants along with late Moideen, the father of the deceased, who died while the claim petition was pending. Before the Motor Accidents Claims Tribunal, the appellants/claimants claimed a total sum of Rs.10,00,000/- as compensation under various heads. By award passed on 31.3.2014, the Motor Accidents Claims Tribunal awarded a total sum of Rs.7,40,000/- as compensation under various heads including the sum of Rs.5,04,000/- towards loss of dependency and directed the third respondent insurer to deposit the said amount together with interest at 8% per annum from the date of petition till

the date of deposit. The claimants have, dissatisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

2. We heard Sri.K.J.Mohammed Anzar, learned counsel appearing for the appellants and Sri.Mathews Jacob, learned Senior Advocate appearing for the third respondent insurer. Sri.K.J.Mohammed Anzar, learned counsel appearing for the appellants contended that the Tribunal has awarded compensation for loss of dependency taking the monthly income of the deceased as Rs.3,500/- on the ground that no evidence has been adduced to prove his occupation and monthly income. The learned counsel submitted that even in the case of a non-earning house wife, the notional income is taken as Rs.4,500/- and therefore, there is no reason why in the case of an able bodied person who was aged only 31 years at the time of the accident in the year 2009, the notional income cannot be taken as Rs.4,500/-. Learned counsel further submitted that if the income of the deceased is taken as Rs.4,500/- per mensem, applying the principles laid down by the Apex Court in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)], the monthly income of the deceased, after taking into account the future prospects, will be Rs.3,900/- and calculated on that basis, the appellants/claimants are entitled to a total compensation of

Rs.7,48,800/- under the head loss of dependency. The learned counsel also submitted that the amount of compensation awarded under the head pain and suffering and loss to the estate is meagre and that an enhancement of compensation awarded under the said heads is called for.

3. Per contra, Sri.Mathews Jacob, learned Senior Advocate appearing for the third respondent insurer contended that apart from the ipse dixit of the appellants there was no material before the Tribunal to show that the deceased was employed as a construction worker or his monthly income and therefore, there is no reason why the award of compensation under the head loss of dependency should be interfered with. The learned Senior Counsel very fairly conceded that a reasonable enhancement may be given under the head loss to the estate and compensation for pain and suffering though the deceased died on the way to hospital.

4. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The fact that the deceased was an able bodied person aged 31 years at the time of the accident is not in dispute. He was also maintaining a family consisting of his wife, his minor son and his parents. The father of the deceased died while

the claim petition was pending. The respondents did not have a case that the deceased was unemployed or that his father was maintaining his family. It is now settled by a series of decisions of the Apex Court that for calculating the loss of dependency on account of the death of a non-earning house wife, the monthly income can be taken as Rs.4,500/- per mensem. If that be so, we are of the opinion that this court can legitimately take the monthly income of an able bodied male, who was aged only 31 years at the time of his death and was looking after his family consisting of his wife, minor child and his parents, as Rs.4,500/-. Though his father, the third claimant was alive when the claim petition was filed, he died during its pendency. The number of persons who are dependent on the deceased has thus come down to 3. Applying the principles laid down by the Apex Court in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [(2009) 6 SCC 121] as the number of dependents is only 3, $\frac{1}{3}^{\text{rd}}$ of the monthly income will have to be deducted towards the personal expenses of the deceased. Calculated on that basis and also taking into account the future prospects, the monthly income of the deceased can safely be taken as Rs.4,500/- less Rs.1,500/- for personal expenses = Rs.3,000/- + Rs.900/- for future prospects = Rs.3,900/-. As the deceased was aged 31 years at the time of the accident, the multiplier

to be adopted is 16. The compensation payable to the claimants for loss of dependency would be Rs.3,900 X 12 X 16 which works out to Rs.7,48,800/-. The Motor Accidents Claims Tribunal has awarded only the sum of Rs.5,04,000/- as compensation for loss of dependency. The appellants/claimants are thus entitled to an additional sum of Rs.2,44,800/- as compensation for loss of dependency.

5. The impugned award discloses that the Motor Accidents Claims Tribunal, has awarded only the sum of Rs.5,000 towards pain and suffering. The postmortem certificate discloses that the cause of death was massive bleeding due to injuries to multiple vital organs. Thus though the deceased died on the way to hospital we are of the opinion that a nominal amount of Rs.10,000/- ought to have been awarded as compensation under the head pain and suffering. Likewise, the Tribunal has awarded only the sum of Rs.2,500/- as compensation under the head loss to the estate. On a modest estimate, we are of the opinion that a minimum amount of Rs.10,000/- should have been granted as compensation under the head loss to the estate.

We accordingly award to the appellants/claimants an additional sum of Rs.2,44,800 + Rs.5,000 + Rs.7,500 = Rs.2,57,300/- as compensation over and above the compensation awarded by the Motor

Accidents Claims Tribunal. The third respondent insurer shall deposit the said sum together with interest at 9% per annum from the date of petition till the date of deposit within two months from today. Upon such deposit being made, the share of compensation payable to the second appellant/second claimant shall be transferred to a fixed deposit in a nationalised bank till he attains the age of majority. The balance compensation shall be released in equal shares to appellants 1 and 3. No costs.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**ANU SIVARAMAN
JUDGE**

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P.A. To Judge

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