

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

MACA.No. 2520 of 2010 ()

AGAINST THE AWARD IN OPMV 1501/2004 of MACT ALAPPUZHA DATED 30-01-2010
APPELLANT(S)/PETITIONERS:

1. SAUDHA AND OTHERS
W/O.LATE JAFFER, VALIYAVEEDU, MULLACKAL WARD
ALAPPUZHA.

2. JESNA JAFFER, AGED YEARS,
D/O.LATE JAFFER, VALIYAVEEDU, MULLACKAL WARD
ALAPPUZHA.

3. JITHIN JAFFER, AGED YEARS,
S/O.LATE JAFFER, VALIYAVEEDU, MULLACKAL WARD
ALAPPUZHA.

BY ADVS.SRI.M.K.CHANDRA MOHANDAS
SMT.K.K.RAZIA
SRI.A.M.NASEER

RESPONDENT(S):RESPONDENTS

1. V.J.GARMESS AND OTHERS
PUTHENTHARAKAN VEEDU, WARD NO.IX, ELAPPARA PANCHAYATH
PEERUMEDU TALUK, IDUKKI-685 501.

2. BENSON, NELLIVILAI VEEDU,
VCHAKADA KULATHOOR P.O., KANYAKUMARI
TAMILNADU-629 702. (DELETED)

3. THE MANAGER,
UNITED INSURANCE CO.LTD., MAIN ROAD, MARTHANDOM
KANYAKUMARI-629 702.

(R2 DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANTS AS PER
ORDER IN IA 2810/2011 DT.3.11.2011)

R3 BY ADV. SMT.R.REMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
ANIL K. NARENDRAN, JJ.**

M.A.C.A.No.2520 of 2010

Dated this the 7th day of April, 2015

JUDGMENT

Anil K. Narendran, J.

The appellants are the claimants in O.P.(MV) No.1501/2004 on the file of the Motor Accidents Claims Tribunal, Alappuzha, an application filed under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of one Jaffer, who was the rider of a motor cycle bearing registration No.KL-04/7354, which met with an accident on 20.9.2004. While the said Jaffer was riding the motor cycle through Alappuzha-Ernakulam NH-47, a lorry bearing registration No.KL-05/2043 driven by the first respondent, which was going in front of the motor cycle stopped suddenly, in a rash and negligent manner, without showing any signal, and the motor cycle hit on the back of the lorry. The said Jaffer fell down on the road and sustained severe injuries, who succumbed to the injuries within few minutes.

2. The Tribunal found that the accident occurred due to the negligence on the part of the first respondent driver and also the deceased Jaffer and fixed their liability in the ratio 60:40. The Tribunal, fixed the total compensation under various heads at Rs.3,00,000/-. Since the liability of respondents 1 to 3 is limited to 60%, the Tribunal limited the compensation payable to the appellants at Rs.1,80,000/-. By award dated 30.1.2010, the Tribunal allowed the appellants to realise an amount of Rs.1,80,000/- (less the interim award of Rs.50,000/-) with interest at the rate of 7.5% per annum from the date of petition, i.e., 20.11.2004, from respondents 1 to 3 and the third respondent insurer was directed to produce crossed demand draft or cheque for Rs.8,873/- in the name of MACT, Alappuzha, towards court fee and cheques or demand drafts for Rs.30,000/- each in the name of appellants 1 to 3 to be released to them and another cheque or demand draft for the balance amount, interest and cost in the name of first appellant to be deposited in a nationalised bank for a period of three years.

3. Aggrieved by the finding of the Tribunal regarding

contributory negligence on the part of deceased Jaffer and also on the quantum of compensation payable under various heads, the appellants are before us in this appeal.

4. We heard the arguments of the learned counsel for the appellants and also the learned Standing Counsel appearing for third the respondent insurer.

5. The main questions that arise for consideration in this appeal are as to whether the finding of the Tribunal that the accident occurred due to contributory negligence on the part of deceased Jaffer is sustainable in law and also whether the compensation awarded under various heads represent just, proper and reasonable compensation.

6. Going by the averments in the claim petition, the accident occurred while deceased Jaffer was riding his motor cycle through Alappuzha-Ernakulam NH-47. A lorry driven by the first respondent, which was going in front of the motor cycle stopped suddenly in a rash and negligent manner, without showing any signal, and the motor cycle hit on the back of the lorry. Jaffer fell down on the road and he

succumbed to the injuries within few minutes. The appellants alleged that the accident occurred solely due to the rash and negligent driving of the lorry by the first respondent. The first appellant is the widow and the second and third appellants are the daughter and son respectively of deceased Jaffer. The appellants contended that deceased Jaffer, who was aged 52 years at the time of accident, was the Proprietor of 'Padma' a firm engaged in wholesale distribution of medicines and that he was working as the Manager of M/s. Padma Medicals, Cherthala, and also as a Commission Agent of M/s. Ocean Medicals, Alappuzha, earning a total monthly income of Rs.12,000/-.

7. Respondents 1 and 2, the driver and owner respectively of the lorry involved in the accident remained absent before the Tribunal and they were set ex-parte. The third respondent insurer filed written statement contending that the accident occurred due to rash and negligent riding of the motor cycle by deceased Jaffar. According to the third respondent, at the time of the accident the lorry was parked on the side of the road, obeying the traffic rules. While so, the motor cycle hit on the back of the lorry due to the rash and negligent riding

by deceased Jaffar. The third respondent admitted that the lorry involved in the accident was covered by a valid policy during the time of accident. But, they contended that, the compensation claimed by the appellants under different heads is exorbitant.

8. Before the Tribunal, Exts.A1 to A8 were marked on the side of the appellants and Exts.B1 and B2 were marked on the side of the respondents. Both sides have not chosen to adduce any oral evidence.

9. On an appreciation of the facts and circumstances of the case and the evidence on record, the Tribunal came to the conclusion that, the accident had occurred due to the rash and negligent driving of the lorry by the first respondent driver. The Tribunal also found that, there is contributory negligence on the part of deceased Jaffar and fixed the liability of the first respondent driver and deceased Jaffer in the ratio 60:40.

10. As we have already noticed, the first respondent driver and the 2nd respondent owner of the lorry involved in the accident remained ex-parte. Both sides have also not chosen to adduce any oral evidence. The third respondent insurer contended that, the motor cycle hit behind

the lorry which was parked on the side of the road obeying the traffic rules. Exts.A1 to A3 are copy of the FIR, scene mahazar and charge sheet in Crime No.234/04 of Mararikulam Police Station. The said documents make it abundantly clear that, the accident occurred when the first respondent driver suddenly stopped the lorry without showing any signal, as a result of which the motor cycle hit behind the lorry and deceased Jaffer sustained severe injuries. Though the materials on record are not sufficient to draw an inference that deceased Jaffer was riding the motor cycle at an exorbitant speed, he could have avoided the accident by keeping a safe distance from the lorry moving in front of his motor cycle. Therefore, the Tribunal cannot be found fault with in concluding that, there is contributory negligence on the part of deceased Jaffer. But, in the facts and circumstances of the case, as borne out from records, we find it appropriate to refix the liability of the first respondent driver of the lorry and deceased Jaffer in the ratio 80:20.

11. Now we shall consider whether the compensation awarded by the Tribunal under various heads represents just, proper and

reasonable compensation. Going by the averments in the claim petition, deceased Jaffer, who was aged 52 years, was the Proprietor of 'Padma' a firm engaged in wholesale distribution of medicines and that he was working as the Manager of M/s. Padma Medicals, Cherthala, and also as a Commission Agent of M/s. Ocean Medicals, Alappuzha, earning a total monthly income of Rs.12,000/-. Ext.A5 is the licence issued to deceased Jaffer by the Assistant Drugs Controller, for conducting wholesale distribution of drugs and medicines under the name 'Padma Medicals', Cherthala. Ext.A6 is the copy of the receipt evidencing payment of licence fee by deceased Jaffer to Cherthala Municipality. Ext.A8 is the partnership deed executed by M/s. Nizar Muhammed and Amina Bai with deceased Jaffer in respect of M/s. Padma Medicals. Ext.A8 would show that deceased Jaffer was the Manager of that firm. Ext.A7 certificate issued by the Managing Partner of M/s. Padma Medicals would show that deceased Jaffer was working with them as Manager from 1.1.1999 to 20.9.2004 and that he was drawing a salary of Rs.6,000/- per month.

12. As we have already noticed, neither the appellants nor the

respondents have chosen to adduce any oral evidence. The Tribunal fixed the monthly income of deceased Jaffer at Rs.3,000/- and after deducting 1/3rd towards personal expenses if he had been alive, the monthly contribution to the family was fixed at Rs.2,000/-. Though the appellants have not chosen to adduce any oral evidence, the documents on record prima facie indicate that, deceased Jaffer was engaged in the field of distribution of drugs and medicines and that he was also working as the Manager of M/s. Padma Medicals from 1.1.1999 onwards. In the facts and circumstances of the case, we find it appropriate to re-fix monthly income of deceased Jaffer at Rs.5,000/-. After deducting 1/3rd towards personal expenses and applying the multiplier of 11, the compensation payable to the appellants towards loss of dependency is re-fixed as Rs.4,95,000/- ($5000 \times 12 \times 11 \times \frac{3}{4}$).

13. Towards compensation for loss of love and affection, the Tribunal awarded a sum of Rs.15,000/- and a further sum of Rs.10,000/- was awarded to the first appellant towards compensation for loss of consortium. In **Rajesh and others v. Rajbir Singh and others (2013 (9) SCC 54)** and in **Jiju Kuruvila and others v.**

Kunjujamma Mohan and others, (2013 (9) SCC 166) the Apex Court has awarded a substantial amount of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection. Following the aforesaid judgments of the Apex Court, the compensation towards loss of consortium awarded to the first appellant, who is the widow of the deceased, is re-fixed as Rs.1,00,000/-. Similarly, the compensation towards loss of love and affection is re-fixed as Rs.1,00,000/- and the second and third appellants, who are the children of the deceased, are entitled for the said sum.

14, Towards pain and suffering, the Tribunal awarded a sum of Rs.5,000/-. It is not in dispute that, the deceased sustained serious injuries in the accident and later he succumbed to the injuries. Considering the nature of injuries sustained, as borne out from Ext.A4 wound certificate, the compensation towards pain and suffering is re-fixed as Rs,10,000/-.

15. Towards funeral expenses, the Tribunal awarded a sum of Rs.3,000/-. In **Rajesh and others v. Rajbir Singh and others (2013**

(9) SCC 54) the Apex Court held as follows; “The head 'funeral expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'funeral expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-.” Following the aforesaid judgment of the Apex Court, the compensation towards funeral expenses is re-fixed as Rs.25,000/-.

16. Towards ambulance charges, the Tribunal awarded a sum of Rs.3,000/-. In the absence of any cogent and convincing materials on record, the appellants are not entitled for any enhancement of compensation under this head.

17. In the result, this appeal is allowed enhancing the compensation awarded to the appellants under various heads, in the following manner;

<i>Head of claim</i>	<i>Amount awarded by the tribunal</i>	<i>Modified award passed by this Court</i>
Loss of dependency	264000	495000
Loss of love and affection	15000	100000
Loss of consortium	10000	100000
Pain and suffering	5000	10000
Ambulance charges	3000	3000
Funeral expenses	3000	25000
Total	300000	733000

18. Since we have re-fixed the contributory negligence on the part of the first respondent driver and deceased Jaffer in the ratio 80:20, the appellants will be entitled for 80% of the total compensation of Rs.7,33,000/-, i.e., Rs.5,86,400/-.

19. The Tribunal awarded interest at the rate of 7.5% from the date of petition till realisation. In **Kaushnuma Begum v. New India Assurance Co. Ltd. (2001 (2) SCC 9)**, taking note of the fact that the nationalised banks are granting interest at the rate of 9% per annum on fixed deposits for one year, the Apex Court directed that, the compensation amount re-fixed shall bear interest at the rate of 9% per annum from the date of the claim. In **Supe Dei (Smt.) and others v. National Insurance Company Ltd. and another (2009 (4) SCC 513)**, after referring to the earlier decision in **Kaushnuma Begum's case**

(supra), the Apex Court awarded 9% interest to the claimant in that case. In view of the above decisions of the Apex Court, we find it just and proper to grant the appellants interest for the additional compensation at the rate of 9% per annum, from the date of petition till payment.

20. The third respondent insurer shall deposit the additional compensation awarded in this appeal together with interest, before the Tribunal, within a period of three months from the date of receipt of a certified copy of this judgment. On such deposit being made by the third respondent insurer, the appellants shall be entitled to withdraw the said amount in terms of the award passed by the Tribunal and modified by this judgment.

The appeal is allowed as above. The parties shall suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(ANIL K. NARENDRA, JUDGE.)

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