

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

MACA.No. 2587 of 2010 ()

(AGAINST THE AWARD IN OP(MV).NO. 2659/2007 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL, ERNAKULAM DATED 16-01-2010)

APPELLANTS/PETITIONER:

GNANASEKAR M.,AGED 44 YEARS, S/O. MICHAEL,
RESIDING AT NO.3 B, SAVARIYAR KOIL STREET,
BISHOPKULAM, THENNUR, TRICHY, TAMILNADU. (LRS IMPEADED)

*ADDL.APPELLANTS 2 TO 4 IMPEADED

*ADDL.A2: RANI GNANASEKAR,
W/O.LATE GNANASEKAR, AGED 44 YEARS,
RESIDING AT 3C, SAVERIYAR KOVIL STREET,
BISHOP KULAM, THENNUR, TRICHY-620 017,
TAMILNADU.

*ADDL.A3: ARUN GNANASEKAR,
S/O.LATE GNANASEKAR, AGED 25 YEARS,
RESIDING AT 3C, SAVERIYAR KOVIL STREET,
BISHOP KULAM, THENNUR, TRICHY-620 017,
TAMILNADU.

*ADDL.A4: RUBAN GNANASEKAR,
S/O.LATE GNANASEKAR, AGED 24 YEARS,
RESIDING AT 3C, SAVERIYAR KOVIL STREET,
BISHOP KULAM, THENNUR, TRICHY-620 017,
TAMILNADU.

*ADDL.APPELLANTS A2 TO A4 ARE IMPEADED AS PER ORDER
DATED 09/12/2015 IN I.A.NO.2804/2015.

BY ADVS.SRI.JOY JOSEPH (MUNDACKAL)
SRI.MATHEW SKARIA
SRI.K.J.JOSEMON

MACA.No. 2587 of 2010

RESPONDENT(S)/RESPONDENTS:

1. JUDE THADHEWUS,S/O. MICHAEL,
PULLUVELY HOUSE, THUNDATHUMKADAVU,
VARAPPUZHA.P.O., ERNAKULAM-683 512.
2. UNITED INDIA INSURANCE CO. LTD.,
CHITTOOR ROAD, ERNAKULAM, KOCHI-682 035.

R1 BY ADV. SRI.SANIL KUMAR
R2 BY ADV. SRI.P.V.JYOTHI PRASAD

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 09-12-2015, THE COURT ON 15-12-2015 DELIVERED THE FOLLOWING:**

sts

C.T. RAVIKUMAR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.2587 of 2010

Dated this the 15th day of December, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is originally preferred by the claimant in O.P.(M.V.)No.2659/2007 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The challenge is against the quantum of compensation awarded by the Tribunal.

2. The matrix of facts is as follows:

On 22.8.2007 at about 7.45 p.m., while the original claimant was walking on the side of Cheranalloor-Varapuzha road, a motor bike bearing registration No.KL-7/AR-8462 came and knocked him down and as such he sustained very grievous injuries. He moved a claim petition before the Tribunal and the claimant was initially granted a sum of Rs.3,21,200/-. Later by an order in I.A.No.4281/2010, another sum of Rs.83,451/- is also awarded towards the reimbursement of unpaid bill amount to the hospital.

Aggrieved by the quantum of compensation, this appeal preferred.

3. Originally this appeal was disposed of by this court as per its judgment dated 3.9.2015. Thereafter it is reported to this court that at the time of hearing the appeal and pronouncing the judgment, the appellant was no more. The wife and children of the claimant who are the legal heirs/representatives moved applications i.e. CMA No.2654/2015 and I.A.Nos.2804, 2805 and 3572 of 2015 for condoning the delay, to set aside the abatement and to implead the petitioners therein as additional appellants. The said applications were allowed by this court on 9.12.2015 and by the said order, the judgment passed by this court is also recalled.

4. Now, in this case it can be seen that the original appellant was working as a security guard in Southpaw Security and Mantech Services Pvt. Ltd. and he was drawing a total salary of Rs.3,255/- and it is also seen proved by an officer from the firm who was examined as

PW2 before the Tribunal.

5. It can be seen that the appellant sustained very severe head injury. He was having subdural haemorrhage and there was fronto parietal subdural bleed with mass effect. It is also disclosed by CT scan report that there was gliotic changes in bilateral frontal and temporal lobes anteriorly. It is further seen that even though the accident occurred on 22.8.2007, he was treated as inpatient till 5.10.2007. As per the submission of the learned counsel for the appellant, he was under ventilation for about 28 days. The learned counsel for the appellant also produced photographs of the appellant to show the seriousness of the injury which is apparent. The photographs are marked as Ext.A13 series before the Tribunal. It is the case of the original claimant that he sustained severe head injury and disability caused. The disability was assessed by an expert i.e. Head of the Department of Neuro, Kolencherry Medical College. The Professor from the said Medical College was examined as PW1 before the Tribunal. The disability

assessed is 65%. It is the case of the original claimant that practically the functional disability comes to 100%. It is also submitted by the counsel that apart from smiling, the original claimant can do no other physical act. Even though it appeared that the functional disability was 100%, for the assessment of compensation, originally, only 65% of the disability taken into account by this court. The Tribunal only considered an income of Rs.2,500/-. The accident occurred in the year 2007. His case is that he is working as a security and an official from the firm is also seen examined. Thus it can be seen that it will be only just and proper to consider Rs.3,255/- as his monthly income, especially when his age was only 43 years and accident occurred in the year 2007.

6. The counsel for the appellants submitted before us that this case has to be treated as a case of death. When a person who is having a functional disability of 100% and the disability is proved to be 65% and when he died at the age of 49, it has to be treated as a case of death due to

accident and compensation has to be assessed.

7. The learned counsel appearing for the Insurance Company submitted that when there is no positive proof regarding the cause of death and when there is no post-mortem conducted in the case, it cannot be considered as a case of death. It is also the case of the counsel that when the original claimant is no more, no amount need be awarded for future treatment as awarded in the recalled judgment. It is also the submission that the additional appellants are not entitled for interest after the death of the original claimant as delay in bringing the said fact on record should not cause any burden to Insurance Company.

8. After considering all these aspects, we feel that it can be treated as a case of death for an assessment of just compensation. But at the very same time, considering the fact that there is no positive evidence regarding the head injury as the cause of death and at the same time, we are fully aware that when the disability was 65% and the person is aged only 43 years at the time of accident and the wife

and children are the legal representatives who now stepped into the shoes of the original claimant there will be loss of consortium and also there will be loss of estate. But at the very same time it may not be proper to take a multiplier as in the usual case. Thus keeping all these aspects in mind, a just compensation is assessed as follows:

9. Towards loss of dependency $\text{Rs.}3255 \times 12 \times \frac{2}{3} \times 10 = 2,60,400/-$ is awarded. This is a case where apparently he suffered a long time before his death. Thus a sum of Rs.40,000/- is granted towards pain and suffering. First, due to accident, husband was having a disability of 65%. Then she lost the life of the husband also. Thus an amount of Rs.1,00,000/- is granted towards loss of consortium. It is to be remembered that no bystander's expenses till death is given on just compensation assessed. The claimants produced bill for Rs.86,200/-. That amount is also awarded towards pecuniary loss. Apart from the same, there was loss of estate. A sum of Rs.1,00,000/- is granted towards loss of estate. While granting this amount on this head, the

amounts granted on other heads are also kept in mind. Considering the fact that originally there was transportation expenses, damage to clothing and now funeral expenses are also to be met, then a consolidated sum of Rs.10,000/- alone is granted on these heads. Thus the additional appellants are entitled for a total compensation of Rs.5,96,600/-. Thus the appellants are entitled for a total compensation of Rs.5,96,600/- which is rounded to Rs.5,97,000/-.

Head of Claim	Amount awarded in Rs.
Loss of dependency	2,60,400
Compensation for pain and suffering	40000
Loss of consortium	1,00,000
Pecuniary loss	86200
Loss of estate	1,00,000
Expenses for transportation, damages to clothing and funeral expenses	10000
Total	5,96,600 Rounded off to Rs.5,97,000 (Rupees five lakhs ninety seven thousand only)

The enhanced compensation will bear 9% interest from the date of petition till 9.12.2013. The respondent No.2 shall

deposit the amount within a period of three months. If the amount is not deposited within the said period, the enhanced compensation will bear 9% interest from today onwards and we permit the appellants to withdraw the amount when the amount is deposited by the Insurance Company. The appellants shall share the amount as follows:

50% of the enhanced compensation shall be given to the wife/second additional appellant and 25% each shall be shared in between respondents 3 & 4/children of the appellants.

The parties shall bear their costs in the appeal.

Sd/-

**C.T. RAVIKUMAR
JUDGE**

Sd/-

**K.P. JYOTHINDRANATH
JUDGE**