

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

MACA.No. 2027 of 2008 ()

AGAINST THE AWARD IN OPMV 533/2003 of M.A.C.T., MANJERI DATED 28-01-2008

APPELLANTS/PETITIONERS:

1. KUTTY MAMMAD.P.K., 55 YEARS,
PALAPPATTA KARIMBANAKKAL HOUSE, PERAKAMANNA P.O.
EDAVANNA, MALAPPURAM DISTRICT (FATHER OF THE DECEASED)
2. ASMABI, 45 YEARS, W/O.KUTTY MAMMAD.P.K.,
PALAPPATTA KARIMBANAKKAL HOUSE, PERAKAMANNA P.O.
EDAVANNA, MALAPPURAM DISTRICT (MOTHER OF THE DECEASED)

BY ADVS.SRI.JOSEPH SEBASTIAN PURAYIDAM
SMT.MABLE.C.KURIAN

RESPONDENTS/RESPONDENTS:

- * 1. KAILASH CHAND SANKLA,
S/O.JEEVAN SING SANKLA, SILDRA POST
NEAR ALBE KATHIYAVADI HOTEL, BICNIWARD, DURGAPUR
RAJASTHAN (OWNER OF THE LORRY) (DELETED)
2. BHERU LAL, S/O.BAJRANG LAL,
TITAYARI, KISHANGARH, AJMEER DISTRICT
RAJASTHAN (DRIVER OF THE LORRY NO.RJ 12G 0621)
3. THE ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE, KISHANGARH P.O., AJMEER DISTRICT
RAJASTHAN (POLICY NO.R/PO 2001/2343 COVER NOTE
NO.JAIPUR RO/M/2K2/NO 0018060) (VALID FROM
01/09/2002 TO 31/08/2003)
(INSURER OF THE LORRY NO.RJ 12G 0621)

*RESPONDENT No.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF
THE APPELLANTS VIDE ORDER DATED 19.12.2013 IN I.A.NO.3447 OF 2013 IN
MACA NO.2027 OF 2008.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)
R3 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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M.A.C.A. No.2027 of 2008

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Dated this the 17th day of July, 2015

JUDGMENT

Anu Sivaraman, J.

The appellants are the claimants in O.P.(MV).No.533 of 2003 on the file of the Motor Accidents Claims Tribunal, Manjeri. They have filed the claim petition for compensation on the death of their son Firoz Khan aged 24 years who was the driver of a lorry. It is alleged that on 2.12.2002 at about 10.15 p.m, the lorry bearing registration No. KL-10/H 6651 driven by the deceased Firoz collided with another lorry bearing registration No. RJ 12G 0621 owned by the first respondent, driven by the second respondent and insured with the third respondent. The second respondent remained absent and was set ex-parte. The third respondent insurer filed a written statement admitting the policy, but denying negligence as well as the age and occupation of the deceased and disputing the compensation claimed.

2. The Tribunal, on considering the pleadings and the evidence produced by the claimants as Exts. A1 and A2, found that the second respondent driver of the lorry was negligent. Thereafter, taking the monthly income of the deceased as ₹2,000/- per month and the multiplier as 13, an amount of ₹2,08,000/- was awarded as compensation for loss of dependency. An amount of ₹5,000/- was awarded under the head loss of love and affection, ₹2,500/- towards

loss to the estate, ₹5,000/- towards pain and suffering, ₹2,000/- towards funeral expenses and ₹1,000/- towards transport to the hospital. Thus a total compensation of ₹2,23,500/- was awarded by the Tribunal. Aggrieved by the inadequacy of compensation awarded, the claimants have preferred this appeal.

3. We heard Sri. Joseph Sebastian, learned counsel appearing for the appellants and Sri. Mathews Jacob, learned Senior Counsel appearing for the third respondent insurer. The deceased was aged 24 years and was admittedly the driver of the lorry bearing registration No. KL-10/H 6651 which was one of the vehicles involved in the accident. In the claim petition, the claimants had pleaded that the deceased was a driver by profession and was also in possession of a badge which enabled him to drive heavy goods vehicle. The monthly income of the deceased has been taken by the Tribunal as ₹2,000/- per month. Going by the averments in the claim petition and the fact that the deceased was a driver by profession, who also possessed a badge and taking into account the then prevailing wages, we are of the opinion that the Tribunal ought to have taken the monthly income of the deceased as at least ₹4,000/- per month. Going by the decision of the Apex Court in **Sarla Verma & Others v. Delhi Transport Corporation & Another** (2009) 6 SCC 121, the multiplier to be adopted with reference to the age of the deceased would be 18. In

the above circumstances, the compensation towards loss of dependency, taking the monthly income of the deceased as ₹4,000/- and deducting half of the same towards personal expenses since the deceased was a Bachelor, and adopting a multiplier of 18, would be an amount of ₹4,32,000/-. Deducting the sum of ₹2,08,000/- awarded by the Tribunal, the appellants will be entitled to an enhanced compensation of ₹2,24,000/- under the head loss of dependency.

4. It is seen from the award that only an amount of ₹2,000/- was awarded by the Tribunal towards funeral expenses. Going by the decision of the Apex Court in **Amrit Bhanu Shali & Others v. National Insurance Co. Ltd., & Others** (2012) 11 SCC 738, on a modest estimate, the appellants would be entitled to a further sum of ₹8,000/- under the head funeral expenses. It is noticed that only an amount of ₹5,000/- has been awarded by the Tribunal towards loss of love and affection. It has been held by the Apex Court in **Amrit Bhanu Shali & Others v. National Insurance Co. Ltd., & Others** (supra) that the parents of a 26 year old young man are entitled to an aggregate amount of ₹1,00,000/- as compensation towards loss of love and affection on the death of their son. We therefore award a further amount of ₹95,000/- towards compensation for loss of love and affection to the parents in this case, who are similarly situated. The Tribunal has awarded only an amount of ₹5,000/- as compensation

towards pain and suffering. It is clear from the award that the deceased did not die instantaneously and while he was being taken to the hospital, that he succumbed to his injuries. Such being the position, we are of the opinion that a further sum of ₹5,000/- is to be awarded as compensation for pain and suffering.

In the result, the appeal is allowed in part, awarding a total enhanced compensation of ₹3,32,000/- to the appellants. The enhanced sum will carry interest at the rate of 9% from the date of petition till the date of payment. The third respondent insurer shall deposit the enhanced amount with interest before the Motor Accidents Claims Tribunal within two months from today. The amount so deposited shall be disbursed to the appellants. No costs.

**P.N.RAVINDRAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

kp/-