IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 25TH DAY OF FEBRUARY 2020 / 6TH PHALGUNA, 1941

MACA.No.2512 OF 2012

AGAINST THE AWARD IN OP(MV)NO.668/2007 DATED 29-07-2011 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANTS:

1 SUNNY A.C.
S/O VARGHESE, AMBALATHARA HOUSE,
CHEERAKKATTUPARA KARA, MANEED P.O, MANEED VILLAGE,
KANAYANNOOR TALUK, ERNAKULAM DISTIRCT (DIED)

2 STELLA M.K
W/O LATE SUNNY A.C, AMBALATGHARA HOUSE,
CHEERAKKATTUPARA KARA, MANEED P.O,
MANEED VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM DISTIRCT

3 ALWIN SUNNY (MINOR), AGED 13 YEARS
S/O LATE SUNNY A.C,
REPRESENTED BY MOTHER STELLA M.K, W/O SUNNY A.C,
AMBALATHARA HOUSE, CHEERAKKATTUPARA KARA,
MANEED P.O, MANEED VILLAGE,
KANAYANNOOR TALUK, ERNAKULAM DISTIRCT

4 ANNA SUNNY (MINOR), AGED 10 YEARS
D/O.LATE SUNNY A.C,
REPRESENTED BY MOTHER STELLA M.K, W/O SUNNY A.C,
AMBALATHARA HOUSE, CHEERAKKATTUPARA KARA, MANEED P.O,
MANEED VILLAGE, KANAYANNOOR TALUK, ERNAKULAM DISTIRCT

BY ADVS.
SRI.MATHEWS K.PHILIP
SMT.T.MANASY

RESPONDENTS:

1 JITHIN P.GOPAL
S/O GOPALAN, PUTHENPARAMBIL HOUSE, KUDAMALOOR P.O,
ARAMANAM VILLAGE, KOTTAYAM - 686017

2 VIJAYAN
S/O DHAMODHARAN, KAVUMMURIYIL HOUSE, VALLICKODCE P.O,
VALLIKODE - 689648

**3 UNITED INDIA INSURANCE COMPANY LIMITED
PATHANAMTHITTA BRANCH
689648**

R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25.02.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Appellants 2 to 4 are the legal heirs of the original claimant in O.P(MV)No.668 of 2007 on the file of the Motor Accidents Claims Tribunal, Ernakulam, a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the injuries sustained by him in a motor accident, which occurred on 26.02.2007, while he was riding a motorcycle bearing registration No.KL-01/P-1167. At the place of accident, the motorcycle was hit by another motorcycle bearing registration No.KL-03/P-150 ridden by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent. In the accident, he sustained injuries. Alleging that the accident occurred due to the rash and negligent riding of motorcycle by the 1st respondent, claim petition was filed before the Tribunal claiming a total compensation of Rs.10,85,000/- under various heads. During the pendency of the claim petition, the original claimant died and his legal heirs were impleaded as additional claimants 2 to 4.

2. Before the Tribunal, the 1st respondent rider and the

2nd respondent owner remained absent and they were set ex parte.

3. The 3rd respondent insurer filed written statement admitting the insurance coverage of the motorcycle involved in the accident; however, denying the negligence alleged against its rider. The insurer disputed the age, occupation, monthly income, etc. stated in the claim petition. The insurer contended that the compensation claimed is highly excessive.

4. Before the Tribunal, Exts.A1 to A11 were marked on the side of the appellants/claimants. The respondents have not chosen to adduce any oral or documentary evidence.

5. After considering the pleadings and materials on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent riding of motorcycle by its rider. Since insurance coverage of the said vehicle was not in dispute, the insurer was held liable to indemnify the insured. Under various heads, the Tribunal awarded a total compensation of Rs.2,85,795/-, together with interest at the rate of 7.5% per annum from the date

of petition till date of deposit, with proportionate cost, and the insurer was directed to satisfy the award.

6. Dissatisfied with the quantum of compensation awarded by the Tribunal, appellants 2 to 4/additional claimants 2 to 4 are before this Court in this appeal.

7. Heard the learned counsel for appellants 2 to 4/ additional claimants 2 to 4 and also the learned Standing Counsel for the 3rd respondent insurer. Since insurance coverage of the offending vehicle is admitted by the insurer, service of notice on respondents 1 and 2 is dispensed with.

8. The issue that arises for consideration in this appeal is as to whether appellants 2 to 4 are entitled for enhancement of the compensation awarded by the Tribunal under various heads.

9. In **State of Haryana v. Jasbir Kaur [(2003) 7 SCC 484]** the Apex Court held that the Tribunal under Section 168 of the Motor Vehicles Act, 1988 is required to make an award determining the amount of compensation which is to be in the real sense 'damages' which in turn appears to it to be 'just and reasonable'. It has to be borne

in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

10. In **National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680]** a Constitution Bench of the Apex Court held that, Section 168 of the Motor Vehicles Act, 1988 deals with the concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle

of equitability.

11. In the instant case, the compensation awarded by the Tribunal under various heads reads thus;

Head	Amount claimed	Amount awarded
Loss of earning	15000	14000
Transportation expenses	4000	1000
Damage to clothes	1000,	400
Extra nourishment	5000	1500
Medical expenses (supported by bills)	300000	229645
Attendant expenses	10000	4250
Shock, pain and sufferings	50000	20000
Compensation for continuing & permanent disability	500000	0
Compensation for loss of earning power	100000	0
Loss of amenities and enjoyment in life	50000	15000
Compensation for future earning power	100000	0
Future treatment expenses	50000	0
Total	**10,85,000**	**2,85,795**

12. The accident occurred on 26.02.2007. At the time of accident, the original claimant was aged 49 years. He claimed a monthly income of Rs.9,000/- as building materials broker. No materials were produced before the Tribunal to prove his monthly income. In the absence of any reliable materials, the Tribunal fixed the monthly income

notionally as Rs.3,500/-, for the purpose of assessing compensation under various heads.

13. In **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236]** the Apex Court reckoned the monthly income of a coolie (manual labourer), who met with a road accident in the year 2004, at the age of 35 years, notionally as Rs.4,500/-. The Apex Court held that, the claimant who was working as a coolie cannot be expected to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in the facts of the said case, the Tribunal should have accepted the claim of the claimant. The Apex Court made it clear that, in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant, in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the

possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time.

14. In **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd. [(2014) 2 SCC 735]**, taking note of the earlier decision in **Ramachandrappa's case (supra)**, the Apex Court reckoned the monthly income of a vegetable vendor, who met with a road accident in the year 2008, at the age of 24 years, notionally as Rs.6,500/-. In the said decision, the Apex Court held that, a labourer in an unorganised sector doing his own business cannot be expected to produce documents to prove his monthly income. Therefore, there was no reason for the Tribunal and the High Court to ask for evidence to prove his monthly income. Going by the state of economy prevailing at that time and the rising prices in agricultural products, the Apex Court accepted his case that a vegetable vendor is reasonably capable of earning 6,500/- per month.

15. In the absence of any reliable evidence, considering the economic conditions prevailing at the time

of accident, i.e., during the year 2007, and taking note of the fixation of notional monthly income by the Apex Court in the decisions referred to supra, this Court deem it appropriate to re-fix the monthly income of the original claimant notionally as Rs.6,000/-, for the purpose of assessing compensation under various heads.

16. The document marked as Ext.A3 is the discharge certificate and Ex.A10 is the treatment certificate. As per the medical records, in the accident, the original claimant sustained bleeding from nose; severe head injury right frontal haemorrhage contusion; Tentorial SAH, SDH post fossa, ICH – Cerebellar (L); Interhemispheric SAH, Pneurrocephalus, blood in basal cistems; and 4th verticle obliterated and fracture cocipitalbone. He had undergone inpatient treatment for a period of 34 days. Ext.A11 is the medical bills for a sum of Rs.2,29,645/-.

17. Towards loss of earning, the Tribunal awarded a sum of Rs.14,000/-, at the rate of Rs.3,500/- for a period of 4 months. Considering the nature of injuries sustained and the treatment the original claimant had undergone, as

borne out from medical records, the period of 4 months fixed by the Tribunal for granting loss of earning is re-fixed as 6 months. Since the monthly income of the original claimant is re-fixed notionally as Rs.6,000/-, the compensation under the head loss of earning is re-fixed as Rs.36,000/- (6,000 x 6), resulting an additional compensation of **Rs.22,000/-** (36,000 – 14,000).

18. On account of the injuries sustained in the accident, the original claimant had undergone inpatient treatment for 34 days. The accident is of the year 2007. Towards transportation to hospital, the Tribunal awarded a sum of Rs.1,000/-. Considering the nature of injuries sustained and the treatment the original claimant had undergone, as borne out from medical records, the compensation under this head is re-fixed as Rs.3,000/-, resulting an additional compensation of **Rs.2,000/-** (3,000 – 1,000).

19. Towards attendant expenses (bystander expenses), the Tribunal awarded a sum of Rs.4,250/-. The Tribunal awarded no compensation under the head extra

nourishment. Considering the nature of injuries sustained and the inpatient treatment the original claimant had undergone for a period of 34 days, this Court deem it appropriate to re-fix the compensation under the head attendant expenses as Rs.6,800/- (200 x 34), resulting an additional compensation of **Rs.2,550/-** (6,800 – 4,250). A further sum of **Rs.5,100/-** (150 x 34) is granted under the head extra nourishment.

20. Towards damage to clothing and articles, the Tribunal awarded a sum of Rs.400/-. Considering the fact that the accident is of the year 2007, the compensation under this head is re-fixed as Rs.1,000/-, resulting an additional compensation of **Rs.600/-** (1,000 - 400).

21. Towards medical expenses, the Tribunal awarded a sum of Rs.2,29,645/-, covered by Ext.A11 medical bills. In the absence of any further materials, the compensation awarded by the Tribunal under this head represents just and reasonable compensation, which requires no enhancement in this appeal.

22. As compensation towards pain and suffering, the

Tribunal awarded as sum of Rs.20,000/-. Considering the nature of injuries sustained and the treatment the 1st appellant had undergone, as borne out from medical records, the compensation under this head is re-fixed as Rs.25,000/-, resulting an additional compensation of **Rs.5,000/-** (25,000 – 20,000).

23. Towards loss of amenities, the Tribunal awarded a sum of Rs.15,000/-. In the absence of any disability certificate, the compensation awarded by the Tribunal under this head cannot be said to be on the lower side, which requires no enhancement in this appeal.

24. In the result, appellants 2 to 4/additional claimants 2 to 4 will be entitled for payment of an additional compensation of **Rs.36,650/-** (Rupees Thirty six thousand six hundred and fifty only) [22,000 + 2,000 + 2,550 + 5,100 + 600 + 5,000] in this appeal, which will carry interest at the rate of **8%** per annum from the date of petition till realisation, excluding the period of delay of 310 days in filing this appeal, which was condoned by a separate order of this date, subject to the condition that the

appellants will not be entitled for interest for the said amount, for the period of delay. The additional compensation granted in this appeal shall be apportioned among appellants 2 to 4/additional claimants 2 to 4 in the ratio 50:25:25. The 3rd respondent insurer shall satisfy the additional compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of a certified copy of this judgment, after deducting the liability, if any, of the claimants towards Balance Court Fee and Legal Benefit Fund. The disbursement of additional compensation to appellants 2 to 4 shall be made taking note of the law on the point and in terms of the directives issued by this Court in Circular No.3 of 2019 dated 06.09.2019 and clarified further in Official Memorandum No.D1-62475/2016 dated 07.11.2019. Appellants 2 to 4 shall provide their Bank account details (attested copy of the relevant page of the Bank Passbook having details of the Bank Account Number and IFSC Code of the branch) before the Tribunal, with copy to the learned Standing Counsel for the insurer, within one month from the

date of receipt of a certified copy of this judgment.

This appeal is disposed of as above. No order as to costs.

Sd/-

ANIL K.NARENDRAN, JUDGE

AV/28/2