IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

MACA NO.781 OF 2013

AGAINST THE AWARD DATED 25.10.2012 IN OP(MV) NO.863/2008 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA

APPELLANTS/PETITIONERS:

1 RAMLATH, AGED 32 YEARS
W/O.DECEASED HAKKIM @ AYYOOB, VADAKKANOLI HOUSE,
P.O.KOOLIMUTTAM, NEDUPARAMBU, KODUNGALLUR.

2 ADHEENA,
AGED 8 YEARS, D/O.DECEASED HAKKIM @ AYYOOB
...DO... (MINOR REP. BY GUARDIAN MOTHER RAMLATH)

3 AYSHABI,
AGED 79 YEARS
M/O. DECEASED HAKKIM @ AYYOOB,
...DO…

BY ADVS.
SMT.JEENA JOSEPH
SRI.G.D.PANICKER

RESPONDENTS/RESPONDENTS:

1 JIDHIN.N.N., NAMBIPUNNILATH HOUSE,
P.O. KORATTIKARA KADAVALLUR PANCHAYATH,
PIN-680543.

2 NIKHIL NAJEEB
S/O.MOHAMMED NAJEEB, NAMBIPUNNILATH HOUSE,
P.O.PERINJANAM WEST, KODUNGALLUR,
PIN-680664.

3 NATIONAL INSURANCE CO. LTD.
MALIACKAL BUILDING, MAIN ROAD,
IRINJALAKUDA, PIN-680121.

BY ADVS.
SRI.PMM.NAJEEB KHAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellants were the petitioners in O.P.(M.V.) No.863/2008 on the files of Motor Accident Claims Tribunal, Irinjalakkuda. The said claim petition was submitted by them seeking compensation for the death of one Hakkim @ Ayyoob due to the injuries sustained in a motor accident that occurred on 08.08.2008.

2. According to the appellants, the accident occurred, when the motorcycle ridden by the deceased was hit by another motorcycle bearing Registration No.KEH 1384, ridden by the 2nd respondent in a rash and negligent manner. The 1st respondent was the owner of the motorcycle ridden by the 2nd respondent and it was insured with the 3rd respondent. The deceased was a businessman with a monthly income of Rs.5,000/-. The deceased was the husband of the 1st appellant, father of the 2nd appellant and was the son of the 3rd appellant. The claim petition was submitted in such circumstances.

3. The 3rd respondent, the insurer of the motorcycle alone contested the matter by filing a written statement, wherein

they admitted the coverage of the policy. However, they disputed the accident and also the negligence. The quantum of compensation was also objected to by them.

4. The evidence in this case consists of oral testimony of PW1, the 1st appellant herself and Exts.A1 to A4 from the side of the appellants. The respondents produced and marked Ext.B1, the copy of the policy. After the trial, the Tribunal arrived at the conclusion that the accident occurred due to the negligence on the part of the 2nd respondent in riding the motorcycle, and being the insurer of the said motorcycle, the 3rd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.3,43,000/- which was directed to be deposited by the 3rd respondent with interest @ 7.5% per annum from the date of petition till realisation with proportionate cost. This appeal is submitted in such circumstances seeking enhancement of compensation.

5. Heard Smt.Jeena Joseph, learned counsel appearing for the appellants and Sri.PMM. Najeeb Khan, learned counsel appearing for the 3rd respondent.

6. The only challenge in this case relates to the quantum of compensation, particularly under the head of loss of dependency. The learned counsel for the appellant points out that the monthly income taken by the Tribunal was only Rs.2,500/- which was very meagre. Besides the same, no addition was made towards future prospects as well. After carefully going through the materials placed on record, I find force in the said contention. As far as the monthly income is concerned, Rs.2,500/- is very low considering that the accident occurred in the year 2008. It is to be noted in this regard that, when the method of computation evolved from the principles laid down by the Honourable Supreme Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd** [(2011) 13 SCC 236], and **Syed Sadiq v. Divisional Manager, United India Insurance Company** [(2014) 2 SCC 735] is taken into account, even in respect of an ordinary worker without any skills, the monthly income can be fixed as Rs.4,500/-, even in the absence any evidence, for the year 2004. The usual method that is adopted to determine the monthly income for the subsequent years is to add Rs.500/- per year.

When such a method is adopted, the reasonable monthly income for the year 2008 can be determined as Rs.6,500/-. Even though the learned counsel for the Insurance Company would point out that the claim was only Rs.5,000/- and no higher amount than the same needs to be taken, I am not inclined to accept the same. It is discernible from the claim petition that their case is that the deceased was a businessman. I have already found that the reasonable monthly income for the year 2008 could be determined as Rs.6,500/-. As far as a businessman is concerned, it may not be possible to reckon the exact monthly income, as the same is likely to vary from month to month depending upon the profits he gets every month. In addition to that, in this case, the claim was made by the legal heirs of the deceased, and therefore, the exact monthly income, the deceased used to get may not be within their knowledge. Moreover, in **Minu Rout v. Satya Pradyumna Mohapatra** [(2013) 10 SCC 695] the Honourable Supreme Court was pleased to take monthly income at higher rates than those claimed in the claim petition. In light of the above, I do not find any legal impediment in adopting a monthly income

which is higher than the amount claimed in the claim petition when the facts and circumstances of the case warrant the adoption of a higher monthly income. In such circumstances, I deem it appropriate to fix the monthly income in this case as Rs.6,500/-.

7. As the deceased was aged 32 years at the time of the accident an addition of 40% of the monthly income has to be made towards future prospects, in the light of **National Insurance Company Ltd. v. Pranay Sethi** [(2017) 16 SCC 680]. As the deceased left behind three dependents the deduction towards personal expenses should be 1/3. Thus, while reassessing the compensation with the revised criteria, the amount would come to Rs.11,64,800/- (6,500+40% x 12 x 16 x 2/3). The amount already awarded by the Tribunal is Rs.3,20,000/- and thus the additional amount would come to Rs.8,44,800/-.

8. The amount awarded by the Tribunal towards funeral expenses was only Rs.2,000/- whereas the actual amount payable in the light of **Pranay Sethi** (supra) was Rs.15,000/-. Therefore, a further sum of Rs.13,000/- is granted. For the same reason, a further sum of Rs.10,000/- is awarded towards loss of

estate, as the amount awarded by the Tribunal under the said head was only Rs.5,000/-.

9. The next head which requires consideration is loss of consortium. In the light of **Magma General Insurance Co.Ltd. v. Nanu Ram alias Churu Ram** [(2018) 18 SCC 130] and **United India Insurance Co Ltd V. Satinder Kaur @ Satwinder Kaur and other** [2020 (3) KHC 760] all the appellants, being wife, daughter and the mother of the deceased, were entitled for compensation under this head @ Rs.40,000/- each and thus, the total amount would come to Rs.1,20,000/-. However, the Tribunal awarded an amount of Rs.10,000/- under this head. Thus, the additional compensation under this head would come to Rs.1,10,000/-. Accordingly, the total additional compensation is determined as Rs.9,77,800/- (8,44,800 + 13,000 + 10,000 + 1,10,000).

In the light of the aforesaid observations and findings, this appeal is allowed. The award dated 25.10.2012 in O.P.(M.V.) No.863/2008 passed by the Motor Accident Claims Tribunal, Irinjalakkuda is hereby modified by granting an additional

compensation of Rs.9,77,800/- (Rupees nine lakhs seventy seven thousand and eight hundred only) and the said amount shall be deposited by the 3rd respondent with interest at the rate as ordered by the Tribunal from the date of petition till realisation with proportionate cost within a period of three months from the date of receipt of a copy of this judgment. It is further clarified that the claimants shall furnish the details of the PAN card, Aadhar Card and bank details to enable the Insurance Company to make the deposit as ordered above, within period of two months from the date of receipt of a copy of this judgment. In case, they fail to furnish the said details, it shall be open for the insurance company to deposit the same amount before the Tribunal.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

SCS