IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

FRIDAY, THE 28TH DAY OF MARCH 2025/7TH CHAITHRA, 1947

MACA NO.3012 OF 2018

AGAINST THE ORDER/JUDGMENT DATED IN OPMV NO.804 OF 2014 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - VIII, ERNAKULAM /IV ADDITIONAL MACT, ERNAKULAM

APPELLANTS/PETITIONERS

1 SUSY SCARIA,
AGED 68 YEARS,
EDAYANAL HOUSE, PAZHAMTHOTTAM P.O,
PAZHAMTHOTTAM, ERNAKULAM

2 SHINEY IVAN,
AGED 50 YEARS,
W/O.IVAN, (D/O.SKARIA), THEKKUMMATTATHIL,
ARAKKUNAM, NEAR MULANTHURITHY ERNAKULAM DIST.

3 SHEENA BIJU,
AGED 45 YEARS,
W/O.BIJU, (D/O.SKARIA), MATTAMANA HOUSE,
KALOOR, ERNAKULAM.

4 SHINJU,
AGED 41 YEARS,
S/O.SKARIA, EDAYANAL HOUSE, PAZHAMTHOTTOM,
PAZHAMTHOTTOM.P.O., ERNAKULAM.

BY ADV PAUL K.VARGHESE

RESPONDENT/2ND RESPONDENT

THE MANAGER, NATIONAL INSURANCE COMPANY
KOLENCHERY(POLICY NO. 570802/31/11/6700009708).
ERNAKULAM - 682311.

BY ADV SRI.N.S.NAJEEB

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioners in O.P.(M.V.) No. 804 of 2014 on the file of the Additional Motor Accidents Claims Tribunal, Ernakulam have preferred this appeal seeking enhancement of compensation awarded by the Tribunal on account of the death of Skaria E.V, who died in a motor accident that occurred on 09.09.2012.

2. The case of the petitioners in brief is as follows:-

On 09.09.2012, at 2.45 p.m., while Skaria, the deceased in this case was riding a motorcycle bearing registration No.KL-7-AM-223 through Pazhamthottam - Pulinchodu public road, a tempo tracks bearing registration No. KL-8-AC-1661, driven by the 1st respondent in a rash and negligent manner and going ahead of the motor cycle driven by Skaria, suddenly stopped and took reverse without giving any signal and the backside of the tempo track hit on the front side of the motorcycle ridden by Skaria. Due to the impact of the hit, Skaria fell on to the

road causing severe injuries. Immediately after the incident, though the injured was rushed to the hospital, due to the serious nature of the injuries sustained in the accident, he died on 25.06.2013.

3. The owner cum driver of the offending tempo track vehicle was arrayed as 1st respondent, whereas, the insurer of the said vehicle was arrayed as 2nd respondent. The 2nd respondent contested the petition by filing a written statement mainly disputing the quantum of compensation claimed.

4. During trial, from the side of the Petitioners Exts.A1 to A14 were marked. No evidence, whatsoever, was adduced from the side of the respondent.

5. After trial, the tribunal came to the conclusion that the accident occurred solely due to the rash and negligent driving of the tempo track bearing registration No. KL-8-AC-1661 by the 1st respondent and being the insurer the 2nd respondent was held liable to pay the compensation. The compensation was quantified as Rs. 12,84,000/- with

interest at the rate of 6% per annum from the date of petition till realisation and proportionate costs. Seeking enhancement of the compensation awarded, the petitioners have come up with this appeal.

6. I heard Sri.Paul.K.Varghese, the learned counsel appearing for petitioners, Sri.N.S.Najeeb, the learned counsel for the respondent.

7. From the rival contentions raised, it is gatherable that the main dispute that revolves around this appeal is with respect to the quantum of compensation awarded. The learned counsel for the appellants would submit that the compensation awarded by the tribunal under various heads is too meager and is not sufficient to compensate the loss suffered by the bereaved family of the deceased. According to the Counsel the tribunal erred in assessing the income of the deceased reasonably and awarded only a meager amount under the head loss of dependency. The counsel further pointed out that as the injured died nine months after the accident the pain and

suffering endured by the deceased due to the accident which continued till his death ought not to have been overlooked by the tribunal while awarding the compensation under the head of pain and sufferings. Per contra, the learned counsel for the respondent would submit that the compensation awarded by the tribunal under various heads is reasonable, just, fair, and, adequate and warrants no interference.

8. A perusal of the award reveals that for the purpose of determining the compensation under the head of loss of dependency, the tribunal assessed the income of the deceased at Rs.7,000/-. Though, in the petition it was stated that the deceased was a businessman at the time of the accident and was earning a monthly income of Rs.30,000/-, no evidence, whatsoever, was produced from the side of the petitioners to substantiate their contentions regarding the occupation and income of the deceased. Nonetheless, admittedly, the accident occurred in the year 2015. Therefore, in view of the decision in

Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. **[2011 (13) SCC 236]** the tribunal ought to have assessed the monthly income of the deceased at Rs. 8,500/-notionally. The deceased was aged 70 years at the time of the accident. The petitioners herein are the wife, two daughters, and son of the deceased. Admittedly, the children of the deceased are major and were married also. Therefore, they are not entitled to be treated as dependents of the deceased eventually, they are not entitled to get any amount as compensation under the head loss of dependency. However, the 1st petitioner being the wife of the deceased is certainly entitled to get compensation under the said head. As the total number of dependents is only one, ½ of the income of the deceased has to be deducted towards his personal expenses. After deducting the said amount income of the deceased can be reasonably fixed at Rs.4,250/-. The deceased was aged 70 at the time of the accident and applying the principle laid down in **Sarla Verma v. Delhi Transport Corporation**

[2010 (2) KLT 802 (SC)], the multiplier applicable is 5. Hence, the 1st petitioner is entitled to get an amount of Rs. 2,55,000/- (Rs. 4,250/- x 12 x 5) as compensation under the head of loss of dependency. Already an amount of Rs.2,10,000/- has been awarded by the tribunal under the head of loss of dependency. After deducting the said amount, the 1st petitioner is entitled to get an amount of Rs. 45,000/- (Rupees Forty Thousand Five Hundred Only) as additional compensation under the said head.

9. Similarly, an amount of Rs.40,000/- has been awarded by the tribunal as compensation under the loss of consortium in favour of the 1st Petitioner. Obviously, the 1st Petitioner being the wife of the deceased she is certainly entitled to get compensation under the said head. However in view of the decision in **National Insurance Company Ltd Vs Pranay Sethi** [2017 (4) KLT 662 SC] the 1st petitioner is entitled to get an amount of Rs.48,000/- as compensation under the head of loss of consortium. Remaining petitioners being the children, their close relation

ship and bondage with the deceased will certainly entitle them to get compensation under the head loss of consortium. Hence an amount of Rs.48,000/- each is to be awarded as compensation under the head of loss of consortium in favour of petitioners 2 to 4. Hence the petitioners are entitled to get an amount of Rs.1,52,000/- as additional compensation under the said head. As a reasonable amount is awarded under the head of loss of consortium the petitioners are not entitled to get any amount as compensation under the head of loss of love and affection. Therefore the amount of Rs.50,000/- awarded by the tribunal under the head of loss of love and affection is to be deducted from the total compensation awarded.

10. Admittedly, the accident occurred on 09.09.2012. As evident from the records, immediately after the accident the injured was taken to a hospital and he had undergone 180 days of impatient treatment. He had sustained the following injuries in the accident.

- Left Fronto Temporo Parietal A/C SDH;
- Left Temporal Contusion;

- Left Temporal Bone Fracture;
- Left Subcondylar Mandible Fracture;
- Right Temporo Parietal Bone Gracture;
- Extradural Abscess;
- Left Temporal ICH.

11. The treatment records further reveal that he underwent five major surgeries as part of the treatment. The pain and sufferings endured by the deceased due to the injuries and the treatment procedures underwent by him cannot be overlooked while awarding compensation under the head of pain and suffering. Furthermore, this is not a case of instantaneous death. The injured died nine months after the accident. Evidently, he was in a vegetative state and was totally bedridden after the accident, till his death. The said fact must certainly be taken note of while awarding compensation under the head of pain and sufferings. I am of the view that an amount of Rs.1,00,000/- is to be awarded under the said head as well. Already an amount of Rs.25,000/- has been awarded by the tribunal under the head of pain and sufferings. After deducting the said amount, the petitioners are entitled to get an amount of

Rs.75,000/-(Rupees Seventy Five Thousand Only) as additional compensation under the said head.

12. As I have already mentioned, this was not a case of instantaneous death. The injured survived nine months after the accident with serious injuries. He became totally a bed-bound man after the accident. Therefore the loss of amenities and enjoyment of life cannot be undermined while awarding compensation. I am of the view that, an amount of Rs.25,000/- (Rupees Twenty Five Thousand Only) is to be awarded under the head of loss of amenities and enjoyment of life.

13. Therefore, an amount of Rs.2,65,000/- (Rs.45,000/-+ Rs.1,20,000/- + Rs.75,000/- + Rs.25,000/-) need to be added to, and an amount of Rs. 50,000/- is to be deducted from the total compensation awarded by the tribunal.

In the light of the aforesaid observations and findings, the appeal is allowed by enhancing the compensation by a further amount of Rs.2,47,000/- (Rupees Two Lakh Forty

Seven Thousand Only) with interest at the rate of 7.5% per annum on the enhanced compensation from the date of claim petition till the date of deposit. The respondent insurance company is ordered to deposit the enhanced compensation with interest before the tribunal with proportionate costs within a period of three months from the date of receipt of the certified copy of this judgment.

Sd/-
JOBIN SEBASTIAN
JUDGE

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