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M.A.C.A No.1523 of 2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

THURSDAY, THE 13TH DAY OF FEBRUARY 2025/24TH MAGHA, 1946

MACA NO. 1523 OF 2018

AGAINST THE AWARD DATED 10.11.2017 IN OP(MV) NO.1374

OF 2014 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

APPELLANTS/CLAIMANTS:

- 1 ASHOK KUMAR
AGED 46 YEARS
S/O.LATE RETNAMMA,
PULIMOOTTIL PADINJATTATHIL VEEDU,
KOTTAKKAKAM MURI, KULANGARA BAGOM,
CHAVARA VILLAGE, KARUNAGAPPALLY TALUK,
CHAVARA P.O., KOLLAM DISTRICT-691 583.
- 2 AJAYAKUMAR
AGED 44 YEARS
S/O.LATE RETNAMMA,
PULIMOOTTIL PADINJATTATHIL VEEDU,
KOTTAKKAKAM MURI, KULANGARA BAGOM,
CHAVARA VILLAGE,
KARUNAGAPPALLY TALUK, CHAVARA P.O.,
KOLLAM DISTRICT-691 583.
- 3 ANITHAKUMARI
AGED 41 YEARS
D/O.LATE RETNAMMA,
PULIMOOTTIL PADINJATTATHIL VEEDU,
KOTTAKKAKAM MURI, KULANGARA BAGOM,
CHAVARA VILLAGE, KARUNAGAPPALLY TALUK,
CHAVARA P.O., KOLLAM DISTRICT-691 583.



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BY ADVS.
SRI.K.SIJU
SMT.RENUKA VENU

RESPONDENTS/3RD RESPONDENT:

THE NATIONAL INSURANCE COMPANY LTD.
REPRESENTED BY THE BRANCH MANAGER,
NATIONAL INSURANCE COMPANY LTD.,
BRANCH OFFICE,
KOLLAM DISTRICT-691 001.

BY ADV SRI.S.K.AJAY KUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 13.02.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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JUDGMENT

The petitioners in O.P. (MV) No.1374/2014, on the file of the Motor Accident Claims Tribunal, Kollam, have filed this appeal seeking enhancement of compensation awarded on account of the death of one Retnamma, who died in a motor accident that occurred on 05.03.2009.

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

On 05.03.2009, at about 5.30 a.m., while Retnamma, the deceased in this case, was walking through the eastern side of the Kollam – Alappuzha NH Road, a Maruthi Van bearing Reg.No.KL-23A/9919 driven by the 1st respondent in a rash and negligent manner hit down Retnamma, causing her severe injuries. Immediately after the accident, though the injured was rushed to the hospital, she succumbed to the injuries while undergoing treatment.

3. The driver and owner of the Maruti Van involved in the accident were arrayed as 1st and 2nd respondents, respectively, whereas, the insurer of the said vehicle is arrayed



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as 3rd respondent.

4. The 3rd respondent insurer filed a written statement mainly contesting the quantum of compensation claimed. However, the 3rd respondent admitted insurance coverage for the offending vehicle.

5. The evidence in this case consists of Exts. A1 to A7 from the side of the claimants. From the side of the 3rd respondent no evidence, whatsoever, was produced. After trial, the Tribunal came to a conclusion that the accident occurred solely due to the negligence on the part of the driver of the Maruti Van bearing Reg.No.KL-23A/9919 and being the insurer, the 3rd respondent was held liable to pay the compensation. The quantum of compensation was fixed at Rs. 1,46,000/- with interest at the rate of 7% per annum from the date of petition till realisation with proportionate costs. Being dissatisfied with the compensation awarded, the claimants have come up with this appeal.

6. Heard Sri. Siju Kamalasanan, the learned counsel



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appearing for the appellants and Sri.Lal George, the learned counsel appearing for the respondent.

7. The learned counsel for the appellants urged that the compensation awarded by the Tribunal under various heads is inadequate and not commensurate with the hardships and the loss sustained to the very bereaved family members of the deceased. The main challenge raised from the side of the appellants is regarding the inadequacy of compensation awarded under the head of loss of dependency. However, the learned Counsel for the respondent, the insurance company would submit that the compensation awarded by the Tribunal under various heads is appropriate and hence no interference is warranted. According to the learned Counsel for the respondent, the petitioners herein are not entitled to get any amount under the head of loss of dependency as none of the claimants were the dependents of the deceased. The counsel further submitted that the fact that the deceased was aged more than 62 at the time of the accident and all the claimants,



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who are the legal heirs of the deceased are aged more than 40 years have their own avocation and income by itself will disentitle them to get any amount as compensation under the head of loss of dependency.

8. From the rival contentions raised, it is gatherable that the main questions which are to be addressed are whether the petitioners are entitled to get any amount as compensation under the head of loss of dependency and if entitled, what would be the compensation awarded. While addressing the said questions, first of all, it is to be noted that the claimants have a case that the deceased was a tailor by profession at the time of the accident. I do agree that other than taking such a contention no evidence was produced from the side of the claimants to show that the deceased was a tailor by profession. However, it is not prudent to expect that the claimants could produce documents to prove the income and occupation of a village lady, who was doing tailoring work from her home. Being a beneficial legislation strict proof of



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evidence is not required while considering a petition filed seeking compensation under the Motor Vehicles Act. Therefore, I am of the view that there is nothing to disbelieve in the case of the petitioners that the deceased was a tailor by profession at the time of the accident.

9. Regardless of the age, when an aged family member earns income, the benefits of the said income will inevitably accrue to the family members. In my considered view, had the deceased been alive, her income would have benefited the family members including the claimants. The services rendered by a mother or wife in a family are invaluable and multifaceted and their value cannot be adequately compensated or assessed solely in financial terms.

10. Likewise, there is no rigid formula that a major child of a married daughter of the deceased cannot be considered as a dependent for the purpose of claiming compensation under the head of loss of dependency. The Hon'ble Supreme Court in **Seema Rani v. Oriental**



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Insurance Co. Ltd. [2025 KHC Online 7116] held that a Tribunal must consider the application for compensation from legal representatives including major children and married daughters irrespective of their full dependency on the deceased. The Hon'ble Supreme Court made it clear that dependency status should be evaluated based on factors such as children's income, employment status and living arrangements with the deceased at the time of the accident. Taking a similar view, the Apex Court in **National Insurance Company Limited. v. Birendar and Others [(2020) 11 SCC 356]** held that major married and earning sons of the deceased, being legal representatives, have a right to apply for compensation, and the Tribunal must consider the application, irrespective of whether the representatives are fully dependent on the deceased or not. In the said case the Apex Court went on to conclude that since the sons, in that case, were earning merely Rs.1,50,000/- per annum, they were largely dependent on the earnings of the deceased and



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were staying with her.

11. While coming to the facts in the present case, though it is true that the children of the deceased are major, there is nothing to show that they had any stable avocation or income making them self-sufficient or independent of the deceased. In such circumstances, there is no reason to deny compensation to them under the head of loss of dependency. Now the remaining question is regarding the amount of compensation that can be awarded under the head of loss of dependency. On the perusal of the impugned award, it is gatherable that for the purpose of calculating the compensation under the head of loss of dependency, the learned Tribunal had assessed the yearly income of the deceased at a meager amount of Rs. 20,000/-. Obviously, the said amount is inadequate and unreasonable. As the accident was in the year 2009, in view of the decision in ***Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd.***[(2011) 13 SCC 236], the Tribunal



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ought to have assessed the income of the deceased at Rs.7,000/- per month. The age of the deceased noted in the postmortem certificate is 57 years. However, the third respondent strenuously disputed this age. It is true that there is no convincing evidence regarding the exact age of the deceased. However, from the petition itself it is decipherable that at the time of the accident, the elder son of the deceased was aged 42 years. Considering the age of the elder son, I am inclined to believe that the deceased was likely more than 65 years old at the time of the accident. Therefore, applying the principle in **Sarla Verma v. Delhi Transport Corporation** [2010 (2) KLT 802 (SC)], the multiplier that can be applied for calculating the compensation under the head of loss of dependency is 5. Resultantly, the compensation receivable by the claimants under the head of loss of dependency will come to Rs.4,20,000/- (Rupees Four Lakhs and Twenty Thousand Only] (Rs. 7,000 x 12 x 5). As the total number of dependents is 3, 1/3 of the said income has to be deducted towards



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personal expenses. After deducting the said amount, the compensation under the head of the loss of dependency will come to Rs.2,80,000/- (Rupees Two Lakhs Eighty Thousand Only). After deducting the already awarded amount of Rs.1,00,000/- under the said head, the additional compensation for which the petitioners are entitled under the head of loss of dependency is Rs. 1,80,000/- (Rupees One Lakh and Eighty Thousand Only) (Rs.2,80,000 - Rs.100,000).

12. A perusal of the impugned award reveals that the Tribunal omitted to award any amount under the head of loss of consortium. The petitioners, being the children of the deceased, are entitled to get Rs.40,000/- each under the head loss of consortium. Hence, an amount of Rs.1,20,000/- has to be awarded as additional compensation.

13. As rightly pointed out by the learned Counsel for the respondent, the Insurance company, the Tribunal had awarded an amount of Rs. 25,000/- under the head of funeral expenses. In view of the decision in **National Insurance**



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Company Ltd. v. Pranay Sethi [2017(4) KLT 662], compensation under the said head ought to have been limited to Rs.15,000/-. Hence an amount of Rs.10,000/- has to be deducted from the compensation awarded under the head of funeral expenses. However, when it comes to the compensation awarded under the head of loss of estate only an amount of Rs. 10,000/- is seen awarded. In view of the decision in **Pranay Sethi** (supra), the petitioners are entitled to get an additional amount of Rs.5,000/- as compensation under the said head. Hence an amount of Rs. 3,05,000/- (Rs.1,80,000/- + Rs.1,20,000/- + Rs. 5,000/-) has to be added and Rs.10,000/- has 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.2,95,000/- (Rupees Two Lakhs Ninety Five Thousand only) (Rs. 3,05,000 - Rs. 10,000) with interest at the rate of 7.5% per annum on the enhanced compensation



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from the date of claim petition till the date of deposit, after deducting interest for a period of 88 days, i.e., the period of delay in preferring this appeal and as directed by this Court on 07.12.2020 in C.M. Appln. No.1775/2018 The 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 a certified copy of the judgment.

sd/-

JOBIN SEBASTIAN
JUDGE

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