

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 24TH DAY OF MAY 2016/3RD JYASHTA, 1938

MACA.No. 1160 of 2014 ()

AGAINST THE AWARD IN OPMV 20/2010 of M.A.C.T., PALAKKAD DATED 10-06-2013

APPELLANTS/PETITIONERS:

1. VIJAYAM, AGED 47 YEARS,
W/O. LATE VASU, NOTTAMPARA VEEDU, THEKEAPARAMBU,
PUDHUPARIYARAM POST, PALAKKAD DISTRICT.
2. VINU V., AGED 27 YEARS,
S/O. LATE VASU, NOTTAMPARA VEEDU, THEKEAPARAMBU,
PUDHUPARIYARAM POST, PALAKKAD DISTRICT.
3. VINITHA V.
D/O. LATE VASU, NOTTAMPARA VEEDU, THEKEAPARAMBU,
PUDHUPARIYARAM POST, PALAKKAD DISTRICT.

BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.GBABITHA

RESPONDENTS/RESPONDENTS:

1. K.K.RAVEENDRAN, AGED 58 YEARS,
S/O. KESAVAN, PADINJAREAMALAYILVEDU, PERUMBIDARI POST,
MANNARKKAD, PALAKKAD DISTRICT - 678 101.
2. DARVIN, AGED 34 YEARS,
S/O. KUNJUKRISHNA NADAR, ARAPPURAKKAL VEEDU, CHANGALEARI POST,
MANNARKKAD, PALAKKAD- 678 101.
3. UNITED INDIA INSURANCE CO. LTD.
REP. BY BRANCH MANAGER, PAZHAYERI COMPLEX, MANNARKKAD POST,
PALAKKAD DISTRICT- 678 101.

R3 BY ADV. SRI.N.S.MOHAMMED USMAN
R BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
24-05-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VPV

P.N.RAVINDRAN & K.RAMAKRISHNAN, JJ.

=====

M.A.C.A.No.1160 of 2014

=====

Dated this the 24th day of May, 2016

JUDGMENT

K.Ramakrishnan, J.

The claimants in O.P.(M.V.)No.20 of 2010 on the file of the Motor Accidents Claims Tribunal, Palakkad are the appellants herein. The claim petition was filed by the claimants, who are the wife and children of the deceased Vasu, seeking compensation for the death of their bread winner, who died in a motor vehicle accident occurred on 15.8.2009. According to the claimants, while the deceased was walking along the side of Palakkad-Kozhikode road at Puthupariyaram, a contract carriage with No.KL-9/N-7686 driven by the second respondent, owned by the first respondent and insured with the third respondent hit against the deceased and on account of the accident, he sustained serious injuries and succumbed to the injuries on the same day. According to the claimants, the accident occurred due to the negligent driving of the vehicle by the second respondent and so, respondents 1 to 3 are jointly and severally liable to pay the compensation. According to the claimants, the deceased was aged 56

years, working as a security guard and getting Rs.5,000/- per month. They claimed a total compensation of Rs.5,40,000/- on various heads.

2. Respondents 1 and 2 entered appearance and filed separate written statements admitting that they are the owner and driver of the vehicle. According to them, the accident occurred due to the negligence of the deceased and there was no negligence on the part of the second respondent. The amount claimed under various heads are high. The vehicle was insured with the third respondent and the compensation if any has to be paid by them. They prayed for dismissal of the application.

3. The third respondent entered appearance and filed written statement admitting the insurance but denied the negligence on the part of the driver of the bus and attributed negligence on the part of the deceased. They also prayed for dismissal of the application.

4. The employer of the deceased was examined as PW1 and Ext.A12 was marked through him. Exts.A1 to A11 and A13 were also marked on the side of the claimants.

5. After considering the evidence on record, the tribunal found that the accident occurred due to the negligent driving of the vehicle by the second respondent and awarded a total compensation of Rs.2,80,000/- under various heads as follows:

Heads	Amount Awarded (in Rupees)
Loss of love and affection	10000
Loss of consortium	10000
Loss of estate	5000
Loss of dependency/economic benefits	252000
Funeral expenses	3000
Total	280000

The tribunal also held that respondents 1 to 3 are jointly and severally liable to pay the amount but directed the third respondent insurance company to deposit the amount as the insurer of the vehicle. Dissatisfied with the quantum of compensation awarded, the present appeal has been preferred by the appellants/claimants before the tribunal.

6. Heard Sri.Binoy Vasudevan, learned counsel appearing for the appellants and Sri.N.S.Mohammed Usman, learned counsel appearing for the third respondent.

7. Learned counsel appearing for the appellants submitted that the tribunal was not justified in discarding Ext.P12 salary certificate and the evidence of PW1 on this aspect. Further no future prospects have been taken into consideration by the tribunal while awarding compensation. The amount awarded under the head loss of consortium, loss of love and affection and funeral expenses are also very low. No amount was awarded under the head pain and suffering. So the claimants are entitled to get enhancement on all heads.

8. On the other hand, learned counsel appearing for the insurance company submitted that the tribunal has considered all the aspects in the right perspective and rightly awarded just and fair compensation and no interference is called for.

9. The case of the claimants in the claim petition was that the deceased was working as a security guard employed by Loyal Solution Providers and he was getting a monthly income of Rs.5,000/-. In order to prove his income, the claimants examined PW1 and produced Ext.A12 salary certificate which was proved through him. It is evident from Ext.A12 that he was having a gross salary of Rs.5,000/- and net salary of Rs.4,432/-, after deducting the provident fund, ESI and profession tax. Since the provident fund and profession tax have been deducted from the salary that will go to show that he is a permanent employee of that institution and the gross salary shown can be taken as the monthly income of the deceased at the time of his death. So the tribunal was not justified in reducing the amount to Rs.3,500/- and we are taking the monthly income of the deceased as Rs.5,000/-.

10. In the decision reported in **Rajesh v. Rajbir Singh** [2013 (3) KLT 89 (SC)] the Supreme Court has held that future prospects will have to be taken into consideration even in the case of persons not having permanent employment and in the age group of 50 to 60, 15% will have to be taken for future prospects. But the tribunal had not

taken any amount under that head. The tribunal was perfectly justified in taking one-third for the personal expenses by taking 9 as multiplier on the basis of the decision reported in **Sarla Verma and Others v. Delhi Transport Corporation and Another** [(2009) 6 SCC 121]. If a recalculation is made on the basis of the above materials, the appellants will be entitled to get an amount of Rs.4,14,000/- (Rs.5,000 x 115% x 12 x 9 x 2/3) instead of Rs.2,52,000/- awarded by the tribunal, thereby they will be entitled to get an additional amount of Rs.1,62,000/- under the head loss of dependency.

11. The tribunal has awarded only the sum of Rs.3,000/- under the head funeral expenses. In the decision reported in **Rajesh v. Rajbir Singh** [supra] the Supreme Court has held that in the absence of any contra evidence regarding higher expenses incurred for funeral expenses a minimum of Rs.25,000/- will have to be awarded. So we award the sum of Rs.25,000/- under the head funeral expenses, thereby, the appellants will be entitled to get an additional amount of Rs.22,000/- under the head funeral expenses.

12. The tribunal has awarded only the sum Rs.10,000/- under the head loss of consortium to the wife, the first claimant, who is aged only 43 years at the time of the death of her husband. There is no possibility of remarriage considering the fact that he is having children of 23 and 22 years respectively. In the decision reported in **Rajesh v.**

Rajbir Singh [supra], the Supreme Court has held that a minimum amount of Rs.1,00,000/- has to be awarded under the head loss of consortium. This dictum has been followed in several decisions of the Supreme Court on the later decisions as well. So we award an amount of Rs.1,00,000/- under the head loss of consortium to the first claimant, thereby she will be entitled to get an additional amount of Rs.90,000/- under the head loss of consortium.

13. The tribunal has awarded only Rs.10,000/- under the head loss of love and affection to the children which we feel is on the lower side and enhance the same to Rs.50,000/-, thereby they will be entitled to get an additional amount of Rs.40,000/- under the head loss of love and affection.

14. No amount was awarded under the head pain and suffering. The tribunal has held in the several decisions that even in the case of instantaneous death, a nominal amount of Rs.10,000/- will have to be awarded as compensation for pain and suffering suffered by the deceased. So we are awarding an amount of Rs.10,000/- under the head pain and suffering. We are not inclined to award any enhancement under other heads as the tribunal had awarded just and reasonable compensation.

So the appellants/claimants are entitled to get an amount of Rs.3,24,000/- as additional compensation over and above the

compensation awarded by the tribunal, which the third respondent insurance company is liable to pay with 9% interest from the date of petition till payment. Three months time is granted to the insurance company to deposit the amount. The entire enhanced compensation awarded is payable to the first claimant and this amount can be deposited subject to the right of the first claimant to apply to the court for withdrawal of the amount showing the necessity for withdrawal with liberty to draw the quarterly interest accrued.

With the above modification of the impugned award, the appeal is allowed in part and disposed of accordingly.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**K.RAMAKRISHNAN
JUDGE**

/true copy/

P.A. To Judge

vpv