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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 11TH DAY OF MARCH 2025 / 20TH PHALGUNA, 1946

MACA NO. 2151 OF 2018

AGAINST THE AWARD DATED 28.02.20218 IN OPMV NO.1443
OF 2016 OF MOTOR ACCIDENT CLAIMS TRIBUNAL ,KOZHIKODE

APPELLANTS/CLAIMANTS:

- 1 CHAITHANAYA, AGED 25 YEARS, W/O.(LATE) SELIN,
AGED 25 YEARS, 40/2001, KAILASAM, NETHAJI ROAD,
P.O.PUTHIYARA, KOZHIKODE.
- 2 ABDUL NAZAR S/O.KUNHI MUHAMMAD, AGED 50 YEARS
- 3 SUHARA W/O.ABDUL NAZAR @ NAZER, AGED 47 YEARS
- 4 SANA D/O.ABDUL NAZAR @ NAZER, AGED 25 YEARS
- 5 ANASM AGED 22 YEARS, S/O.ABDUL NAZAR @NAZER

ALL ARE RESIDING AT SANAS, NEEKKAMPURATH, MANAKKADAVU,
P.O. PANTHEERANKAVU, KOZHIKODE.

BY ADVS.
SMT.K.V.RESHMI
SMT.J.DEEPTI

RESPONDENT/3RD RESPONDENT:

THE NEW INDIA GENERAL INS.CO.LTD.
ETTUMANOOR BRANCH, EDEN'S SHOPPING CENTRE, 2ND FLOOR,
PALA ROAD, KOTTAYAM, PIN - 686001



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BY ADVS.
LAL K JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 11.03.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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"C.R."**JUDGMENT**

The petitioners in OP(MV) No.1443/2016 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode have preferred this appeal seeking enhancement of compensation awarded by the tribunal on account of the death of Selin, who died in a motor accident that occurred on 30.07.2015.

2. The petitioners' case in brief is as follows:

On 30.07.2015 at about 8.30 a.m., while Selin, the deceased in this case was traveling from Kozhikode to Wayanad in a car bearing registration No.KL-05-AC-1786 driven by the 2nd respondent in a rash and negligent manner, it hit a tree standing on the side of the road at Koolivayal. Due to the impact of the hit, Selin sustained serious injuries. Immediately after the accident, though the injured was rushed to the Medical College Hospital, Kozhikode, on 05.08.2015, he succumbed to the injuries.

3. The owner and the driver of the offending car were arrayed as the 1st and the 2nd respondents respectively, whereas, the



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insurer of the car was arrayed as the 3rd respondent.

4. The 3rd respondent contested the petition by filing a written statement mainly disputing the quantum of compensation claimed.

5. During trial, from the side of the petitioners Exts.A1 to A8 were produced and marked. From the side of the respondents, no evidence, whatsoever, was adduced.

6. After trial, the tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the car bearing registration No.KL-05-AC-1786 by the 2nd respondent and being the insurer, the 3rd respondent was held liable to pay the compensation awarded. The compensation was quantified as Rs.17,67,700/- with interest at the rate of 8% per annum from the date of petition till realisation and proportionate costs. Dissatisfied by the compensation awarded by the tribunal, the petitioners have come up with this appeal, seeking enhancement of compensation.

7. I heard Smt. Rashmi K.V., the learned counsel for the appellants and Sri. Lal K Joseph, the learned counsel for the



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respondent insurance company.

8. From the rival contentions raised it is discernible that the main dispute that revolves around this appeal is with respect to the quantum of compensation awarded by the tribunal. The learned counsel for the appellants/petitioners would submit that the compensation awarded by the tribunal is too meager and is not sufficient to compensate for the loss of the bereaved family of the deceased. Per contra, the learned counsel for the respondent would submit that the compensation awarded by the tribunal on various heads is just, fair, reasonable, and adequate and warrants no interference.

9. A perusal of the award reveals that for the purpose of determining compensation under the head of loss of dependency, the tribunal assessed the monthly income of the deceased at Rs.7,000/-. In the petition, it was claimed that the deceased was running a mobile shop earning a monthly income of Rs.20,000/-. Apart from taking such a contention, no evidence, whatsoever, was adduced from the side of the petitioners to substantiate their claim regarding the occupation and



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income of the deceased. Nonetheless, the accident occurred in the year 2015. Therefore in view of the decision in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd.** [(2011) 13 SCC 236], the tribunal ought to have assessed the monthly income of the deceased at Rs.10,000/- notionally. The deceased was admittedly aged 26 years at the time of the accident. Applying the principles in **National Insurance Company Ltd. v. Pranay Sethi** [2017(4) KLT 662] an addition of 40% has to be made to the actual income of the deceased towards future prospects. Resultantly, the income of the deceased can reasonably be fixed at Rs.14,000/- [Rs.10,000/- + Rs.4,000/-].

10. As the total number of dependants is five, 1/4th of the income has to be deducted towards his personal expenses. After deducting the same, the monthly income of the deceased can be assessed at Rs. 10,500/- (Rs.14,000/- – Rs.3,500/-). The deceased was aged only 26 at the time of the accident and applying the dictum of **Sarla Verma v. Delhi Transport Corporation** [2010 (2) KLT 802 (SC)], the multiplier to be reckoned is 17. Hence, the petitioners are



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entitled to get an amount of Rs.21,42,000/- [Rs.10,500/- x 12 x 17] as compensation under the head of loss of dependency. Already an amount of Rs.14,99,400/- has been awarded by the tribunal under the said head. After deducting the said amount, additional compensation of Rs.6,42,600/- is to be awarded under the head of loss of dependency.

11. Admittedly, the petitioners are none other than the wife, father, mother, sister, and brother of the deceased. The learned counsel for the respondent strenuously contended that the father and siblings of the deceased will not come within the category of dependents and hence 1/3rd of the income has to be deducted towards personal expenses. Though a contention, as stated above was raised, it is to be noted that such a contention was first raised only at this appellate stage. The said contention was not even raised in the written statement filed by the respondent. However, I am cognizant that strict principles of pleadings are not applicable in motor accident claim cases. However, only when the contentions are specific, the petitioner could effectively prosecute his petition and adduce necessary evidence.



Moreover, in the case at hand, no cross-objection or appeal has been filed by the respondent, the insurance company, challenging the finding of the tribunal that all the petitioners are dependants of the deceased and hence 1/4th of the income is to be deducted towards the living expenses of the deceased.

12. Moreover, while coming to the factual scenario, notably, the father of the deceased was aged 50 at the time of the accident. At such an advanced age, a person would naturally look forward to his son for support, care, and future well-being. Consequently, the loss of a major son would significantly impact his expectations, emotional stability, and overall quality of life. Obviously, a father will share the responsibilities with his major son. Furthermore, dependency does not necessarily mean only financial dependency. Therefore, merely because the father of the deceased was aged only 50 years, it could not be said that the father is not a dependent.

13. In the case of the siblings of the deceased also, it could not be said that they are not the dependents of the deceased. Admittedly, the 4th petitioner is the younger sister and the 5th



petitioner is the younger brother of the deceased. Evidently, both of them were unmarried and residing under the same roof with their deceased brother and parents. As I have already stated, dependency does not mean financial dependency only. The emotional and physical support that would have been rendered by the deceased to his siblings if he had been alive persuades me to treat the unmarried and younger siblings of the deceased as his dependents. Moreover, there is no evidence to show that any of the siblings were earning members, or capable of maintaining themselves. Therefore, I have no hesitation in holding that the decision of the tribunal to treat the father and siblings of the deceased, as dependants is quite appropriate and justifiable. Consequently, only 1/4th of the income can legally be deducted towards the personal expenses of the deceased, as the total number of dependents is five.

14. A perusal of the award further reveals that compensation under the head of loss of consortium has been awarded by the tribunal solely in favour of the deceased's wife acknowledging her loss of companionship, and consortium due to the accidental death of her



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husband. The amount of compensation awarded under the said head is Rs.40,000/-. The tribunal omitted to award compensation under the head of loss of consortium in favour of the 2nd and 3rd petitioners irrespective of the fact that they are the parents of the deceased. Their close relationship and bondage with the deceased would certainly entitle them to get compensation under the head of loss of consortium as well. Resultantly, the 2nd and 3rd petitioners are entitled to get an additional compensation of Rs.40,000/- each under the head of loss of consortium. Since compensation has been awarded under the head of loss of consortium, petitioners 1 to 3 are not entitled to get compensation under the head of loss of love and affection. However, 4th and 5th petitioners are entitled to get compensation under the head of love and affection particularly when no amount has been awarded under the head of loss of consortium in favour of them. Already an amount of Rs. 25,000 has been awarded by the tribunal under the head of love and affection. I am of the view that the said amount can be adjusted towards compensation payable to the 4th and the 5th petitioners under the head of loss of love and affection.



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In the light of the aforesaid observations and findings, the appeal is allowed by enhancing the compensation by a further amount of Rs. 7,22,600/- (Rupees seven lakhs twenty-two thousand six hundred only) (Rs. 6,42,600/- + Rs. 80,000/-) 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 three months from the date of receipt of the certified copy of this judgment

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Sd/-

JOBIN SEBASTIAN
JUDGE

ncd