



2024:KER:98358

MACA No.532/2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 24TH DAY OF OCTOBER 2024 / 2ND KARTHIKA, 1946

MACA NO. 532 OF 2018

OPMV NO.653 OF 2016 OF II ADDITIONAL MACT, PALAKKAD

APPELLANT/3RD RESPONDENT IN OP(MV) :

THE NEW INDIA ASSURANCE CO.LTD., N.S.TOWER, NEAR STADIUM BUS STAND, VALIPARAMBU, KALMANDAPAM, PALAKKAD-678013, REPRESENTED BY THE DULY CONSTITUTED ATTORNEY, C.R.SURESH, (MANAGER), REGIONAL OFFICE, KANDAMKULATHY TOWERS, M.G.ROAD, KOCHI-682011.

BY ADV DINESH MATHEW J. MURIKAN

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 2 IN OP(MV) :

- 1 SINDHU K., AGED 31 YEARS, W/O.KANNAN.K, PANAMPALLAM, CHITTUR, NATTUKAL.P.O, KOZHINJAMPARA, PALAKKAD DISTRICT, NOW RESIDING AT KANGAYAMKKAD, KARINGARAPULLY, PALAKKAD DISTRICT, PIN-678559.
- 2 BHARATHIRAJA, AGE NOT KNOWN, S/O.THANKAVELU.P, 14/27F6, MAHATHMA GANDHI STREET, MOOLATHURAI, SIRUMUGAI, METTUPALAYAM, TAMILNADU-641302.
- 3 MURALIDHARAN.R., AGED 33 YEARS, S/O.RAMAKRISHNAN, SMART GARDENS, 577 COLLEGE, PUDUR, VEERAPANDI, TIRUPUR, NOW RESIDING AT GANESHAPURAM, PAMPAMPALLAM, PUDUSSERY, PALAKKAD DISTRICT, PIN-678621.

BY ADVS.
SHYAM PADMAN
BOBY M.SEKHAR

OTHER PRESENT:

SMT. LAYA MARY JOSEPH -R

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR HEARING ON 24.10.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



“CR”

JUDGMENT

This appeal has been filed by the third respondent insurer in OP(MV) No.653 of 2016 on the file of the Additional Motor Accidents Claims Tribunal-II, Palakkad, challenging the impugned award dated 31.07.2017. The first respondent herein was the claimant and respondents 2 & 3 herein were respondents 1 & 2 before the tribunal.

2. The case of the claimant before the tribunal was that on 11.10.2015, while the deceased Siju was walking along the side of the public road in Chandranagar, a motorcycle bearing Reg.No.TN 40-B-9556 ridden by the second respondent in a rash and negligent manner, hit against him, whereby he sustained fatal injuries and succumbed to the injuries. The claimant has approached the tribunal claiming a total compensation of ₹20,00,000/-. The first respondent appeared before the tribunal and filed a written statement. The second respondent remained *ex parte* before the tribunal. The third respondent insurer filed a written statement, admitting the policy coverage for the offending vehicle, but disputing the liability and quantum of compensation claimed. Before the tribunal, PW1 was examined and Exts.A1 to A11 were marked on the side of the claimant.



Ext.B1 was marked on the side of the third respondent insurer. The tribunal, after analysing the pleadings and materials on record, held that the accident took place on account of the negligence of the driver of the offending vehicle and awarded a sum of ₹9,50,000/- as compensation under different heads against the third respondent being the insurer. The respondent insurer has come up in appeal, alleging that the quantum of compensation awarded by the tribunal is excessive.

3. Heard the learned Standing Counsel for the appellant/respondent insurer and the learned counsel for the first respondent/claimant.

4. The main challenge raised in this appeal is regarding the compensation awarded by the tribunal towards loss of dependency. Before the tribunal, the insurer raised the contention that the claimant, being the sister of the deceased, was not entitled for compensation towards loss of dependency. The claimant was the only legal heir of the deceased Siju. The learned Standing Counsel for the insurer submits that the claimant being a married person, is not dependent on her deceased brother and hence, is not entitled for compensation towards loss of dependency. The learned Standing Counsel for the insurer further relied on the judgment in **Sarla Verma v. Delhi Transport**



Corporation [2010 (2) KLT 802 (SC)], wherein it was held that basically only three facts need to be established by the claimants for assessing compensation in the case of death: (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. Thus, according to the learned Standing Counsel, the claimant, being not a dependent of the deceased Siju, is not entitled for compensation. The learned counsel for the claimant, on the other hand, submits that the tribunal has rightly awarded compensation under the afore head. Her parents are no more and the claimant being the only legal heir/legal representative, was dependent on her brother and hence, she is entitled for compensation for the death of her brother, Siju.

5. I have considered the rival contentions raised on both sides. First of all, the fact that the claimant was the legal representative of the deceased is not disputed. Further, it is also undisputed that the claimant was the sole legal heir of the deceased. The claimant, a 30-year-old married woman, was residing with her husband. Although married, the claimant, being the sole sibling, might have been financially dependent on her brother since her parents are no more. However, no evidence was adduced to prove the same. In **Joseph v. Giji Varghese & Others** [2009 KHC 1076], this Court had occasion to deal with a similar situation, wherein the claim petition was



filed by the sibling of the deceased, and held as follows:

“The learned counsel for the appellant further raised a contention that even though there is no loss of dependency, there is loss of estate to the claimants and respondents 4 to 8, they being legal heirs of the deceased. The contention is that the Tribunal ought to have granted compensation considering the loss of estate. It has come out in evidence that the deceased was an Agriculturist. Even though there is no proof regarding quantum of income derived by the deceased, it can be presumed that the deceased was earning some amount out of agricultural operations. If that be so, whatever surplus amount, which will remain after meeting personal expenses of the deceased, would have been his savings which ultimately could have devolved upon his sibling (legal heirs) as his estate. Taking view of the matter in this angle, we are of the opinion that the Tribunal ought to have granted compensation under the head of loss of estate. On our moderate estimate we arrive that the deceased was getting notional income of Rs.1500/- per month. Considering the fact that he had no wife and children 2/3rd of the amount can be deducted towards his personal expenses. Based on the age of the deceased the correct multiplier to be adopted is 11. Therefore 1/3rd of the earnings can be computed as loss of estate of the deceased. Thus the legal heirs of the deceased are entitled to get an amount of Rs.66,000/- towards loss of estate. We are inclined to award the said amount. Hence the total compensation need be re-fixed at Rs.92,500/- (Rs.66,000- Rs.26,500).”

In **Elamma & others v. ICICI Lombard General Insurance** [2023:KER:84777], following the judgment in **Joseph (supra)**, this Court held that the siblings of the deceased are entitled for compensation under the head, loss of estate. Here, in this case, the claimant is the only legal heir of the deceased. I find that while the claimant is not entitled to compensation for loss of dependency, she is entitled to compensation for loss of estate, which can be calculated using the same method as for loss of dependency. In **Joseph (supra)**, this Court had deducted 2/3rd of the income towards personal expenses, which



was followed by this Court in **Elamma** (*supra*). However, it is already settled by the apex court in **National Insurance Co. Ltd. v. Pranay Sethi** [2017(4) KLT 662(SC)] that if the deceased is a bachelor, the amount to be deducted towards personal expenses is 50%. Therefore, I find that the tribunal has rightly deducted 50% of the income towards personal expenses and the compensation awarded by the tribunal towards loss of estate does not deserve any interference.

6. The learned Standing Counsel for the insurer submitted that the tribunal awarded ₹25,000/- towards funeral expenses, however, going by the judgment in **Pranay Sethi** (*supra*), the maximum amount of funeral expenses ought to have been granted by the tribunal is ₹15,000/-. The accident occurred in the year 2015. Since there is only a marginal difference, there is no necessity to interfere with the compensation awarded by the tribunal towards funeral expenses and I hold that the compensation awarded by the tribunal towards funeral expenses is just and reasonable.

7. The learned counsel for the claimant submits that the tribunal has not awarded any compensation towards loss of consortium or loss of love and affection. The claimant, being the sibling of the deceased, may not be entitled to loss of consortium, but certainly entitled to compensation towards loss of love and affection.



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Accordingly, I deem it appropriate to award a compensation of ₹40,000/- towards loss of love and affection.

Accordingly, the appeal is dismissed. However, the first respondent/claimant is awarded an additional compensation of ₹40,000/- (Rupees forty thousand only) over and above the compensation awarded by the tribunal with interest @ 8% per annum from the date of petition till realization and proportionate costs. The insurer shall deposit the said amount together with interest and costs within a period of two months from the date of receipt of a certified copy of this judgment. The claimant shall furnish copies of the PAN Card, AADHAAR Card and bank details before the insurer within a period of one month so as to enable the insurer to make the deposit as ordered above. In case of failure to furnish details as above, it shall be open for the insurer to deposit the said amount before the tribunal. Upon such deposit being made, the entire amount shall be disbursed to the claimant at the earliest in accordance with law.

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE

bka/-