

Jessy, vs Suresh Kumar,

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : MACA/2369/2019

Appellant : JESSY,

Respondent : Suresh Kumar,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN
WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946 OPMV
NO.1362 OF 2016 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
APPELLANTS/PETITIONERS:

1 JESSY, AGED 51 YEARS WIDOW OF RAPHAEL,
CHERUTHURUTHY HOUSE, ATTAPADAM MULLASSERY
DESOM, THEKKAMURI VILLAGE, MURINGOOR, KINFRA PARA P.O.,
PIN-680309, CHALAKUDY, THRISSUR DISTRICT, KERALA STATE. 2
REJO RAPHAEL, AGED 24 YEARS S/O. RAPHAEL (LATE),
CHERUTHURUTHY HOUSE, ATTAPADAM MULLASSERY

DESOM,THEKKAMURI VILLAGE, MURINGOOR, KINFRA PARA P.O.,
PIN-680309, CHALAKUDY,THRISSUR DISTRICT, KERALA STATE. 3
RAJI RAPHAEL, AGED 21 YEARS D/O. RAPHAEL (LATE),
CHERUTHURUTHY HOUSE, ATTAPADAM MULLASSERY
DESOM,THEKKAMURI VILLAGE, MURINGOOR, KINFRA PARA P.O.,
PIN-680309, CHALAKUDY,THRISSUR DISTRICT, KERALA STATE. BY
ADVS. V.P.POULOSE SRI.P.J.JOSE

RESPONDENTS/RESPONDENTS:

1 SURESH KUMAR, S/O. VELAYUDHAN, KALLIDUMBI HOUSE,
PULLASSERY P.O., PIN-679307, PATTAMBI, PALAKKAD, KERALA
STATE. ..2.. 2 VINOD KUMAR N., S/O. VIJAYA MENON, VINOD
NIVAS, MULAYAMKAVU P.O., PIN-679337, KULUKKALLUR,
PALAKKAD, KERALA STATE. 3 RELIANCE GENERAL INSURANCE
CO. LTD., MANGALAM TOWERS, T.B. ROAD, PALAKKAD-678014,
KERALA STATE.

OTHER PRESENT: SMT. LATHA SUSAN CHERIAN -SC THIS MOTOR
ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
31.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
..3..

JUDGMENT

This appeal has been filed by the claimants in OP(MV) No.1362 of 2016 on the file
of the Motor Accidents Claims Tribunal, Irinjalakuda. The respondent herein was
the third respondent before the tribunal.

2. The case of the appellants/claimants is that on

06.09.2016, while the deceased was riding a scooter bearing Reg.No.KL-45-A-
3907 through Angamaly-Chalaky sector of NH 47 road, a car bearing
Reg.No.KL-52-C-165 owned and driven by the first and second respondents
before the tribunal respectively, hit against the scooter ridden by him, whereby he

sustained grievous injuries and succumbed to the injuries on 13.09.2016. The appellants, being the legal heirs of the

deceased, approached the tribunal claiming a total compensation of 20,00,000/-.

3. Respondents 1 and 2 remained ex parte before the tribunal. The respondent insurer filed a written statement, admitting the policy coverage for the offending vehicle, but ..4..

disputing the liability and quantum of compensation claimed. Before the tribunal, Exts.A1 to A18 were marked on the side of the appellants/claimants. No evidence was adduced by the respondents. 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 9,28,500/- as compensation under different heads against the third respondent being the insurer. Dissatisfied with the quantum of compensation awarded by the tribunal, the claimants have come up in appeal.

4. Heard the learned counsel for the appellants and the learned Standing Counsel for the respondent insurer.

5. The learned counsel for the appellants claims enhancement under the following heads; 5.1. Notional income - The learned counsel for the

appellants submits that though the appellants claimed that the deceased was earning 20,000/- per month, the tribunal has fixed the notional monthly income at 10,000/-. It is submitted that the deceased was a businessman, who was ..5.. running a provision store in a self owned building. The

appellants produced Ext.A12 panchayat licence, Ext.A1 professional tax receipts and Ext.A16 ownership certificate to prove that the deceased was doing business in his own building. Though as per the decision in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236], the notional monthly income of the deceased ought to have been fixed at 10,500/-, considering the fact that the deceased was a businessman aged 57 years at the time of the accident, I deem it appropriate to fix his the notional monthly income at

14,000/-.

5.2. Loss of dependency - Since the notional monthly income of the deceased is refixed at 14,000/-, the

compensation towards loss of dependency has to be recalculated by adding 10% future prospects to the refixed notional monthly income (14000 + 1400 = 15400). Thus, following the decisions in National Insurance Co.Ltd. v. Pranay Sethi [2017(4) KLT 662(SC)] and Sarla Verma v. Delhi Transport Corporation [2010(2) KLT 802(SC)], the appellants will be entitled to get a total compensation of 11,08,800/-

..6.. (15400 x 12 x 9 x 2/3) towards loss of dependency. Hence, there will be an additional amount of 3,16,800/- under the head of loss of dependency. 5.3. Loss of consortium - Though the appellants claimed

an amount of 2,00,000/- under this head, the tribunal awarded only an amount of 40,000/-, which, according to the appellants, is on the lower side. Following the decision in National Insurance Co.Ltd. v. Pranay Sethi [2017(4) KLT 662(SC)], the appellants 1 to 3, being the legal heirs of the deceased, are entitled to get a total compensation of 1,20,000/- towards loss of consortium. Thus, there will be an additional amount of 80,000/- towards loss of amenities.

6. Though the appellants claimed enhancement of

compensation under other heads, on a perusal of the records available, I am not inclined to interfere with the compensation awarded by the tribunal under other heads since it appears to be just and reasonable. Thus, the impugned award of the tribunal is modified as follows; ..7.. Sl.

No.	Head of Claim	Amount	Amount	Modified
tribunal (in)				
1.	Funeral expenses	50000	15000	15000
2.	Transportation expenses	10000	5000	5000

3. Medical 100000 11500 11500 expenses
4. Pain and 200000 30000 30000 sufferings
5. Loss of 2000000 792000 316800 1108800 dependency
6. Loss of love and 200000 affection
7. Loss of 100000 expectation of life
8. Loss of estate 200000 15000 15000
9. Loss of 200000 40000 80000 120000 consortium
10. Damage to 5000 clothing
11. Extra 3000 nourishment
12. Loss of 200000 marriage prospects of ..8.. minor petitioner
13. Loss of shock 100000 and anxiety
14. Mental pain and 20000 20000 trauma of bystanders Total 3268000 928500 396800 1325300 (limited to 2000000)

Accordingly, the appeal is allowed in part and the appellant/claimant is awarded an additional compensation of 3,96,800/- (Rupees three lakh ninety six thousand and six hundred 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 respondent 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 respondent insurer within a period of one month so as to enable the insurance company to make the deposit as ordered above. In case of failure to ..9..

furnish details as above, it shall be open for the insurance company to deposit the said amount before the tribunal. Upon such deposit being made, the entire amount shall be disbursed to the appellants at the earliest in accordance with law. Sd/-
SHOBA ANNAMMA EAPEN JUDGE bka/-

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