



2023/KER/63459

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 14<sup>TH</sup> DAY OF SEPTEMBER 2023 / 23TH BHADRA, 1945

MACA NO. 51 OF 2019

[AGAINST THE AWARD IN OP(MV) NO.2000/2015 DATED 29.8.2018 ON THE  
FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM]

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO.LTD  
D.O.II, PRESS ROAD, THIRUVANANTHAPURAM-1 REPRESENTED BY  
ITS ADMINISTRATIVE OFFICER, REGIONAL OFFICE, M.G.ROAD,  
ERNAKULAM.

BY ADVS.

K.S.SANTHI

LATHA SUSAN CHERIAN

RESPONDENTS/CLAIMANTS:

1 SHYMI

2 FYHA

3 JABBAR,

4 ZEENATH,

BY ADVS.

SRI.PRATHEESH P.

SMT.RENY ANTO

OTHER PRESENT:

THIS CROSS OBJECTION/CROSS APPEAL HAVING COME UP FOR  
ADMISSION ON 14.09.2023, ALONG WITH CO.52/2019, THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 14<sup>TH</sup> DAY OF SEPTEMBER 2023 / 23TH BHADRA, 1945

CO NO. 52 OF 2019 IN MACA NO.51/2019

[AGAINST THE AWARD IN OP(MV) NO.2000/2015 DATED 29.8.2018 ON

THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOLLAM]

CROSS OBJECTORS/RESPONDENTS/CLAIMANTS:

1 SHYMI  
AGED 27 YEARS

2 FYHA,  
AGED 4 YEARS

3 JABBAR,  
AGED 58 YEARS

4 ZEENATH,  
AGED 53 YEARS

BY ADV PRATHEESH P.

RESPONDENT/APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO. LTD,  
D.O.II, PRESS ROAD, THIRUVANANTHAPURAM-1, REPRESENTED  
BY ITS ADMINISTRATIVE OFFICER, REGIONAL OFFICE,  
M.G.ROAD, ERNAKULAM.

BY ADV K.S.SANTHI

THIS CROSS OBJECTION/CROSS APPEAL HAVING COME UP FOR  
ADMISSION ON 14.09.2023, ALONG WITH MACA.51/2019, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

[MACA No.51/2019 & CO No. 52/2019]

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This appeal is submitted by the appellant 3<sup>rd</sup> respondent - Insurance Company, challenging the award dated 29.08.2018 passed by the Motor Accident Claims Tribunal, Kollam, in OP(MV) No.2000/2015. The aforesaid claim petition was submitted by the respondents herein seeking compensation for the death of one Shameer, in a motor accident that occurred on 14.10.2015. The deceased was the husband of the 1<sup>st</sup> respondent, the father of the 2<sup>nd</sup> respondent and the son of respondents 3 and 4.

2. The accident occurred when the motorcycle ridden by the deceased was hit by a KSRTC Bus bearing registration No.KL-15 S 9446 driven by the 2<sup>nd</sup> respondent in the claim petition. The said vehicle was insured with the appellant herein. According to the claimants, the deceased was working as a Scaffold worker under one Musthafa with a monthly income of ₹18,000/-. The total amount of compensation claimed was ₹20 lakhs.

3. The owner and driver of the vehicle filed a written statement disputing the negligence on the part of the 2<sup>nd</sup> respondent in the claim petition. The quantum of compensation was also disputed. It was also contended that the vehicle was covered with a valid insurance policy at the relevant time, issued by the appellant herein and therefore, if at all



there is any liability, that has to be indemnified by the appellant herein. The appellant filed a written statement admitting the coverage of policy in respect of the vehicle but disputed the liability on various grounds. The quantum of compensation was also disputed. The negligence on the part of the 2<sup>nd</sup> respondent in the claim petition was also disputed.

4. The evidence in the case consists of the oral testimony of PW1 and Exts.A1 to A11 were marked from the side of the claimants. From the side of the appellant/3<sup>rd</sup> respondent, Ext.B1 was marked. After the trial, the tribunal found that the accident occurred due to the negligent driving of the 2<sup>nd</sup> respondent in the claim petition and being the insurer of the said vehicle, the appellant was held responsible for paying the compensation. The quantum of compensation was fixed as ₹36,00,040/-, and the appellant was directed to deposit the amount along with interest at the rate of 8% from the date of petition till the date of realisation with proportionate costs. This appeal is filed by the appellant/3<sup>rd</sup> respondent, aggrieved by the quantum of compensation. The claimants have filed a cross objection seeking enhancement of compensation.

5. Heard Smt. Latha Susan Cherian, the learned counsel appearing for the appellant and Sri. Pratheesh P., the learned counsel appearing for the respondents/cross objectors.

6. The learned counsel for the appellant specifically raised the



contention that the amount awarded under the head of loss of dependency is on the higher side. It was pointed out that even though the respondents claimed that the deceased was working with a monthly income of ₹18,000/-, no reliable evidence was adduced to substantiate the same. Even though PW1 was examined, claiming to be the employer of the deceased and produced Ext.A11 salary certificate, the tribunal rejected the said certificate. However, despite such rejection, the tribunal fixed monthly income as ₹16,220/- without any supporting materials, contends the learned counsel for the appellant. The learned counsel for the respondent opposes the said contentions.

7. I have carefully gone through the records. It is discernible from the observations made in the award that, as per the deposition of PW1, the employer of the deceased, he used to pay an amount of ₹700/- per day for 14 days in a month towards the salary of the deceased. However, the tribunal noted that even though the deceased had been working with him for the past six years, no documents were produced to show the remittance of any amount towards the Kerala Construction Workers Welfare Board. It was in that circumstances, Ext.A11 was rejected by the tribunal and proceeded to determine the monthly income of the deceased by fixing the remuneration as ₹900/- for a period of 18 days, thereby fixing the monthly income as ₹16,200/-. The crucial aspect to be noticed is that the computation made by the tribunal is against the



deposition of PW1, who was examined by the respondents themselves. This is particularly because, even as per his deposition, the daily wages paid to him were at the rate of ₹700/- that too for the period of 14 days in a month. Therefore, the computation adopted by the tribunal appears to be not correct. However, it is a fact that, admittedly, the deceased was a skilled labourer, and the accident occurred in the year 2015. As per the principles laid down in the **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd** [(2011) 13 SCC 236] and **Syed Sadiq v. Divisional Manager, United India Insurance Company** [(2014) 2 SCC 735] even in respect of an ordinary worker, the monthly income can be fixed as ₹10,000/- in respect of an accident that occurred in the year 2015. Here, the deceased was a skilled employee, and therefore, a slightly higher monthly income can be taken. Therefore, I am of the view that under no circumstances the monthly income of the deceased can be less than ₹13,000/-. Therefore, I deem it appropriate to fix ₹13,000/- as the monthly income of the deceased.

8. The next aspect is the contention put forward by the learned counsel for the appellant with respect to the deduction to be made towards personal expenses. It was pointed out that the tribunal deducted  $\frac{1}{4}$  of the monthly income, taking into account the number of dependents as four. According to the learned counsel for the appellant, the 3<sup>rd</sup> respondent, the father of the deceased, could not have been included, as



he could not have been treated as a dependent. Hence, according to the appellant, the proper deduction should have been 1/3<sup>rd</sup>. The learned counsel also places reliance on the observations made in **Sarla Verma v. Delhi Transport Corporation & Ors.** [2010(2)KLT 802 (SC)].

9. However, I am not inclined to accept the said contention. The circumstances under which the said observations made by the Hon'ble Supreme Court were completely different. The said observations were made concerning the manner in which the deduction is to be made in the case of the death of a bachelor, which was a different situation. In the said decision, the Honourable Supreme Court observed that the bachelor is likely to spend more on himself and in the near future, he would get married; thereupon, his contribution to the parents and siblings would be cut down drastically. Of course, it was observed that subject to the evidence to the contrary, the father is likely to have his own income, and he will not be considered as a dependent, and the mother alone would be treated as the dependent. However, since the said observations were made while deciding the question of deduction towards the personal expenses of the bachelor, the same yardstick cannot be made applicable to hold that even in respect of the death of a married man, the father has to be excluded from the list of dependents, for the purpose of deciding the deduction to be made.

10. Considering the social and economic situation prevailing in our society, there is nothing wrong in treating the father of the deceased as



one of the dependents, at least for the purpose of determining the personal expenses of the deceased. It is true that, under normal circumstances, after the son's marriage, he would spend more on his wife and children, and the father's dependency on him would be limited. However, the fact that the father does not depend upon the son for day-to-day affairs, by itself, would not make the father disentitled to be treated as one of the dependents to determine the deductions to be made towards personal expenses. This is because, when the years pass, and advanced age weakens the earning capacity of the father, or various ailments, age-related or other, start affecting the mental and physical ability of the father, the son is supposed to or expected to come forward and support him. Such support from the son is something which a father can reasonably look forward to. The deduction towards the personal expenses of the person is to be calculated by determining the amount the deceased is likely to spend on himself during his lifetime. For the said purpose, the probable expenses a person may incur if he were alive are to be considered, and that is precisely why the Honourable Supreme Court introduced different percentages of deductions based on the number of dependents. Since the lifetime expenses are to be thus taken into account while computing the same, not only the expenses which the deceased used to incur at the time of the death but also the expenses he is likely to incur in future, had he been alive, should also to be taken into





consideration. While determining the said aspect, the expenses he is likely to incur for looking after his father should also be considered. Such an aspect requires to be necessarily one of the criteria for the determination of the rate of deduction, more particularly because, in our country, social security schemes (sponsored by the government or otherwise) are confined to a very small section of our society, and the majority of the population has to find out their own resources to tide over the exigencies in the old age. Therefore, the support of their children at such difficult times and the duties of the children to fulfil such requirements are realities which cannot be ignored in our societal set-up. Since the provisions in the Motor Vehicles Act relating to compensation are part of social welfare legislation, adjudication of the questions relating to the same, cannot be made by ignoring such social standards and realities.

11. There is yet another aspect. The appellant contends that the father cannot be treated as dependent, whereas there is no objection to treating the mother as a dependent. Such a view is also not proper, as it creates unwarranted discrimination and is part of a patriarchal point of view where the women are treated as weaker, and the men are treated as always strong, i.e. someone who will always be capable of taking care of themselves without the support of anyone. Men also do crumble down and look forward to the support of others, particularly from their children,



at various stages of life for various reasons such as financial exigencies and setbacks, physical and mental ailments, loss of earning capacity as the age advances, etc. Thus, not treating the father of the deceased as a dependent, at least to determine the rate of deduction to be made from the income of the deceased son towards his personal expenses, would be an injustice. Therefore, I am of the view that the father is to be treated as a person dependent upon the son for that purpose. Thus, I find that the number of dependents in this case is to be taken as four, and therefore, the deduction of 1/4<sup>th</sup> made by the Tribunal is not liable to be interfered with.

12. In such circumstances, while reworking the compensation with the revised monthly income and making a deduction of 1/4<sup>th</sup> towards personal expenses, the amount of compensation would come to Rs.27,84,600/- (Rs.13000+40%X12 X 17 X ¾) as against Rs.34,70,040/- awarded by the tribunal. This would result in a deduction of Rs.6,85,440/-.

13. Besides the same, it is also to be noted that an amount of ₹50,000/- has been awarded by the tribunal under the head of pain and suffering. The said amount is not justifiable as held in **United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur [(2021) 11 SCC 780]**. Therefore, the same amount is also to be deducted. Thus, the total amount to be deducted from the amount awarded by the Tribunal



would come to Rs.7,35,440/-.

14. At this juncture, the learned counsel for the respondents would point out that the amount awarded under the head of loss of consortium was only ₹40,000/-, whereas the actual amount receivable by them in respect of four persons should be Rs.1,60,000/-. The said contention is to be accepted in the light of the observation made in **National Insurance Company Ltd. v. Pranay Sethi [2017(4) KLT 662]** and **Satinder Kaur's case (supra)**. Therefore, an additional amount of Rs.1,20,000/- under this head is awarded. Thus, the total compensation receivable by the appellant would come to Rs.29,84,600/- (3600040 – 735440 + 120000).

In such circumstances, this appeal and cross objection are disposed of by modifying the award dated 29.08.2018 passed by the Motor Accident Claims Tribunal, Kollam in OP(MV) No.2000/2015 by revising the total compensation to the respondents as **Rs.29,84,600/-** (Rupees twenty nine lakhs eighty four thousand and six hundred only) and the said amount shall be deposited by the appellant Insurance Company along with interest at the rate as ordered by the tribunal with proportionate costs, after adjusting the amounts already deposited, within a period of three months from the date of receipt of a copy of this judgment.

pkk

Sd/-  
ZIYAD RAHMAN A.A.  
JUDGE