

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, 1944

MACA NO. 4653 OF 2019

[AGAINST THE AWARD DATED 16.09.2019 IN OP(MV)NO.1663/17 ON THE
FILE OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PATHANAMTHITTA]

APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO.LTD.,
MOTOR TP CLAIM HUB, DIVISIONAL OFFICE,
KHAISE BUILDING, BEACH ROAD, KOLLAM-691001,
REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, M.G.ROAD, ERNAKULAM.

BY ADVS.SRI.GEORGE CHERIAN
K.S.SANTHI
SMT.LATHA SUSAN CHERIAN

RESPONDENTS/PETITIONERS:

- 1 GOPINATHAN K.K., AGED 67 YEARS,
KUNNAKATTIL HOUSE, ANJILITHANAM.P.O.,
KAVIYOOR VILLAGE, THIRUVALLA TALUK-689582.
- 2 SUMATHI.K.K., AGED 69 YEARS, KARUDAKARI HOUSE,
MAMPUZHAKKARY, RAMANKARY VILLAGE,
KUTTANADU TALUK-689595.
- 3 SAMKUTTI K.K., AGED 65 YEARS, 2/116,
INDHIRA GANDHI SALAI, NADAMBAKKAM KANCHEEPURAM,
TAMIL NADU-600 069.
- 4 K.K.RAJAN, AGED 59 YEARS, KUNNAKATTIL HOUSE,
PADINJATTUSERIL MURI, AJILITHANAM.P.O.,
KAVIYOOR VILLAGE, THIRUVALLA TALUK-689582.

BY ADV SMT.STEFFY V.J.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 01.03.2023, ALONG WITH MACA.199/2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, 1944

MACA NO. 199 OF 2023

[AGAINST THE AWARD DATED 16.09.2019 IN OP(MV)NO.1663/2017

ON THE FILE OF THE HON'BLE MOTOR ACCIDENTS CLAIMS

TRIBUNAL, PATHANAMTHITTA]

APPELLANTS/PETITIONERS:

- 1 GOPINATHAN, AGED 70 YEARS, KUNNAKATTIL (H),
ANJILITHANAM P.O., KAVIYOOR VILLAGE,
THIRUVALLA TALUK, PATHANAMTHITTA-689 582.
- 2 SUMATHI.K.K., AGED 72 YEARS, KARUDAKARI (H),
MAMPUZHAKKARY P.O., RAMANKARY VILLAGE,
KUTTANADU TALUK, PATHANAMTHITTA-689 585.
- 3 SAMKUTTI.K.K., AGED 68 YEARS, 2/116,
INDIRA SALAI, NADAMBAKKAM, KANCHIPURAM,
TAMIL NADU-600 069.
- 4 K.K.RAJAN, AGED 62 YEARS, KUNNAKATTIL (H),
PADINJATTUSERIL MURI, ANJILITHANAM P.O.,
KAVIYOOR VILLAGE, THIRUVALLA TALUK,
PATHANAMTHITTA-689 582.

BY ADV.SMT.STEFFY V.J.

RESPONDENT/RESPONDENTS:

- 1 LIJO.V.J., S/O.JOY.V.K., VALLIKATTIL (H),
MANGALATH, AMARA P.O., MADAPPALLY,
CHANGANASSERY, KOTTAYAM-686 546.

- 2 SAJI C.J, S/O.JOSEPH, CHIRAKUZHIYIL HOUSE,
MADAPALLY P.O., CHANGANASSERY,
KOTTAYAM-686 546.

- 3 THE DIVISIONAL MANAGER,
THE NEW INDIA ASSURANCE CO.LTD.,
MOTOR TP CLAIM HUB, DIVISIONAL OFFICE,
KHAISE BUILDING, BEACH ROAD, KOLLAM-691 001.

BY ADVS.SRI.GEORGE CHERIAN, SC
SMT.K.S.SANTHI,
SMT.LATHA SUSAN CHERIAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 01.03.2023, ALONG WITH MACA.4653/2019,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

JUDGMENT

[MACA Nos.4653/2019, 199/2023]

Focally, two main aspects are porpoised for decision by this Court in this Appeal, namely, what should be the notional income of a nonagenarian person who is killed in a road accident; and if his/her children - who are themselves senior citizens - can be granted compensation for "Loss of Parental Consortium".

2. Among the two Appeals above - which have been heard together, since they emanate from the same Award of the Motor Accidents Claims Tribunal ('Tribunal', for short), Pathanamthitta - MACA No.4653/2019 has been filed by the New India Assurance Company Limited ('Insurance Company', for short), impugning it as being excessive; while MACA No.199/2023 has been filed by the claimants, contending to the contrary and seeking enhancement.

3. The constitutive facts involved in these cases are that late Kuttan Karutha was standing on the side of a main road, when he was knocked down by the offending vehicle driven in a rash and negligent manner, he being thus grievously injured. Though he was taken to a private hospital and then referred to the Medical College Hospital, Kottayam, he succumbed to the injuries later.

4. The claimants - children of the deceased - filed OP(MV)No.1663/2017 before the Tribunal seeking compensation of Rs.10,00,250/-, but which has been allowed only to the extent of Rs.5,35,260/-. They challenge it, through MACA No.199/2023, as being inadequate; while, as said above, the Insurance Company filed MACA No.4653/2019 assailing it as being too high.

5. I have heard Sri.George Cherian, learned Senior Counsel, instructed by Smt.Latha Susan

Cherian - learned counsel, appearing for the Insurance Company and Smt.Steffy V.J. - learned counsel for the appellants in MACA No.199/2013.

6. The main points of controversy between the parties are as regards the notional income reckoned by the learned Tribunal in favour of the deceased; and if compensation under the head "Loss of Consortium", could have been granted to the claimants, since they were all over 60 years in age.

7. Sri.George Cherian - learned Senior Counsel, submitted that, since the deceased was 94 years at the time of the accident, it is impossible to believe that he was earning anything and therefore, that a notional income could not have been reckoned in his favour. He then predicated that, going by the judgment of the Hon'ble Supreme Court in *National Insurance Company Ltd. v. Pranay Sethi* [2017 (4) KLT 662

(SC)], reaffirmed in *Magma General Insurance Company Limited V. Nanu Ram Alias Chuhru Ram & Others* [(2018) 18 SCC 130], only a "child" would be entitled to compensation for "Loss of Consortium" of a father, who was killed prematurely in an accident, and not senior citizens.

8. Sri.George Cherian concluded his submissions saying that, in any event, no amount ought to have been granted by the Tribunal under the head "Pain and Suffering", going by the judgment of the Hon'ble Supreme Court in *United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur* [(2021) 11 SCC 780].

9. *Au contraire*, Smt.Steffy V.J. argued that it is uncontroverted that the deceased, though aged 94 years at the time of the accident, was a businessman involved in timber brokering and real estate, with an income of

Rs.24,000/- per month. She argued that, therefore, the adoption by the Tribunal of a mere Rs.5,000/- per month as the notional income of the deceased was improper; and further that the Tribunal erred in deducting one half of it towards his personal expenses. She argued that the Tribunal ought to have taken the income of the deceased to be Rs.24,000/- per month and should have deducted only one-fourth of that for personal expenses, because the claimants are his legal heirs and therefore, dependents.

10. When I evaluate and assess the afore submissions, it is indubitable that there are broadly two issues impelled, namely: (a) what is the notional income to be adopted in favour of the deceased, who was 94 years of age at the time of the accident; and (b) whether the claimants are entitled to be granted any amount under the head "Loss of Consortium", as has been

done by the Tribunal, albeit, under the head "Loss of Love and Affection". A corollary issue also arises as to whether the Tribunal was correct in having deducted one-half of the notional income of the deceased, towards personal expenses.

11. On the first of the afore aspects, namely, the notional income of the deceased, I have no doubt that even at the age of 94, if there is no evidence to the contrary to prove that he was not gainfully employed, or capable of earning, an income must be reckoned in his favour and compensation granted. None of the precedents that cover the field inhibit this; and therefore, what is relevant for this Court is to verify whether there is some input in the evidence and pleadings, as to whether the deceased was profitably working.

12. In the afore context, the uncontroverted

pleadings on record by the claimants are to the effect that the deceased was a "Timber Broker-cum-Real Estate businessman" and that he was earning an income of Rs.24,000/- per month. Since the factum of the deceased working in the afore fashion being unassailed, that part certainly will have to be taken into account, while considering the income for the purpose of computing the compensation for "Loss of Dependency".

13. In such perspective, since the evidence on record does not include any material to affirmatively establish the income of the deceased, I am certain that the Tribunal ought to have been guided by the standardization postulated by the Hon'ble Supreme Court in *Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd.* [(2011) 13 SCC 236]. In this judgment, the Hon'ble Court has

held that, even in the case of a person with unascertainable income in the year 2017 - when the accident occurred - the minimum notional income to be reckoned is Rs.11,000/-. Of course, since the deceased was 94 years old at that time, I am of the view that no future prospects deserves to have been added. Thus, the adoption by the Tribunal of only Rs.10,000/- as his notional income, cannot find my favour. I am certainly of the view that the notional income ought to have been taken as Rs.11,000/- and this answers the contentions of both sides, though they are contrary to each other on this issue.

14. Travelling to the question of deduction of personal expenses, I cannot find that the Tribunal has acted incorrectly, since it has held that one-half of the income of the deceased should be so deducted. This is because, none of the claimants can be seen to be financially

dependent upon their 94 year old father, particularly when they themselves are all senior citizens; and hence the same yardstick as would be applied in the case of a bachelor, would have to be pressed into service in this case. It is undisputed that, had the deceased been a bachelor, the deduction for personal expenses could have been one-half, and this is the analogy adopted by the Tribunal in the case at hand. I cannot find this to be in error and therefore, confirm it.

15. The sole surviving issue is whether the Tribunal ought to have granted any amount to the appellants under the head "Loss of Consortium", though it has been titled "Loss of Love and Affection".

16. Of course, no amount towards "Loss of Love and Affection" need to have been granted, but this would be of no consequence because the

amount granted is Rs.40,000/- each to the claimants and it is thus obvious that it is, in fact, reckoned as compensation for "Loss of Consortium", going by *Pranay Sethi* (supra).

17. As I have seen above, the submissions of the learned Senior Counsel - Sri.George Cherian, are to the effect that no amounts could have been granted under the head "Loss of Consortium" at all, because the claimants are all senior citizens, who would not enjoy any consortium with their father, who was 94 years of age.

18. I am afraid that this argument is too farfetched to be even countenanced because, whatever be the age of the father or the children, their relationship continues till the end; and for every father, his offsprings are always children.

19. In that perspective, the words "child" or "children" used in *Pranay Sethi* (supra) or

Nanu Ram (supra) are only reflective of the relationship between the deceased and the claimants and are not to be interpreted in the manner that the said words are defined in special statutes like the Juvenile Justice (Care and Protection of Children) Act, 2015; or the Protection of Children from Sexual Offences Act, 2017; or the Commission for Protection of Child Rights Act, 2005. When consortium becomes payable to children, it does not mean that it will be only eligible to a girl or boy under the age of 14, as has now been attempted to be argued by the learned Senior Counsel, but even to a person much beyond that age, if the premature death of his/her father/mother is on account of a road accident. I, therefore, am left without doubt that the Tribunal did not err in granting compensation to the claimants under the head "Loss of Love and Affection", though it

should have been titled "Loss of Consortium".

20. That said, I find some force in the submissions of the learned Standing Counsel that no sum under the head "Pain and Suffering" ought to have been granted by the Tribunal, as per *Satinder Kaur* (supra).

Resultantly, these Appeals are disposed of in the following manner:

(a) The compensation under the head "Loss of Dependency" is revised to Rs.3,30,000/- (Rupees three lakhs thirty thousand only), from Rs.3,00,000/-, reckoning the notional income of the deceased to be Rs.11,000/- per month and one-half of the same being deducted towards his personal expenses.

(b) The compensation under the head "Pain and Suffering" is deleted.

(c) In all other heads, the compensation granted by the Tribunal will remain intact.

Needless to say, the appellants in MACA No. 199/2023 will be at full liberty to recover the compensation, as enhanced by this Court, from the Insurance Company, along with interest at the rate of 9%, as awarded by the Tribunal, from the date of claim until it is recovered. They will also be entitled to proportionate costs on the enhanced amount as ordered by the Tribunal.

After I dictated this part of the judgment, learned Senior Counsel - Sri.George Cherian, argued that no interest is eligible on the enhanced amount to the claimants because MACA No.199/2023 was instituted much after MACA No. 4653/2019 was filed by his client.

I am afraid that the afore argument is without basis because, MACA No.199/2023 was, in fact, filed on 01.02.2023 - a mere one and half months after MACA No.4653/2019 had been filed - but it was thereafter numbered later on account

MACA Nos.4653/2019 & 199/2023

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of certain technical reasons. This argument is therefore, repelled.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

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