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IN THE HIGH COURT OF KERALA AT ERNAKULAM

'C.R.'

PRESENT

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 7TH DAY OF NOVEMBER 2024 / 16TH KARTHIKA, 1946MACA NO. 352 OF 2018AGAINST THE JUDGMENT DATED 27.10.2017 IN OPMV NO.592 OF
2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM.APPELLANTS/PETITIONERS:

- 1 HARIHARAN.V.V, S/O. VASU, VANNERY HOUSE,
CHEROOR DESOM, CHEROOR P.O., THRISSUR DISTRICT.
- 2 NIKHIL, S/O. HARIHARAN, VANNERY HOUSE,
CHEROOR DESOM, CHEROOR P.O., THRISSUR DISTRICT.
- 3 NIGHILA, AGED 15 YEARS, (MINOR), D/O. HARIHARAN,
REP.BY FATHER HARIHARAN, VANNERY HOUSE,
CHEROOR DESOM, CHEROOR P.O., THRISSUR DISTRICT.

BY ADVS. SRI.SHEJI P.ABRAHAM & ABRAHAM JOSEPH

RESPONDENTS/RESPONDENTS:

- 1 PAILOTH, S/O. OUSEPH, THARATIL HOUSE, VELUTHOOR,
THACHAMPULLY, KUNNATHANGADI, THRISSUR - 680 001.
- 2 M.D. SUNILKUMAR, MAMPULLY HOUSE,
ANTHIKKAD DESOM P.O., THRISSUR - 680 001.
- 3 NEW INDIA ASSURANCE CO.LTD.,
BRANCH OFFICE, JRJ COMPLEX, OTTAPALAM - 679 101.

R3 BY ADV SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 05.11.2024, THE COURT ON 07-11-2024
DELIVERED THE FOLLOWING:



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JOHNSON JOHN, J.**'C.R'**

MACA No.352 of 2018

Dated this the 7th day of November, 2024.

J U D G M E N T

Appellants are the petitioners in OP(MV) No.592 of 2015 on the file of the Motor Accident Claims Tribunal, Ottappalam and they are challenging the quantum of compensation awarded by the Tribunal under various heads and also the exoneration of the insurance company from liability as per the impugned award.

2. The appellants are the legal heirs of the deceased Nithin, who was travelling as a spare driver in lorry bearing registration No.KL 08 E 9664 driven by the first respondent, owned by the second respondent and insured with the third respondent. According to the petitioners, because



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of the rash and negligent driving of the first respondent, the lorry hit against another lorry bearing registration No.GJ 01 BY 6005 when it reached Shahapura in Karnataka at about 5.00 p.m., on 22-01-2014. The deceased, who sustained fatal injuries succumbed to the injuries on 04-12-2014.

3. The third respondent/insurance company contended in the original written statement that the deceased was travelling as a spare driver in the goods vehicle and the policy issued will cover the liability of only one driver and therefore, the third respondent is not liable to pay any compensation to the petitioners. In the additional written statement, the third respondent contended that the deceased was travelling in the goods vehicle as a gratuitous passenger and the policy will not cover a gratuitous passenger as no



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additional premium was collected to cover the liability of a gratuitous passenger.

4. According to the petitioners, the deceased was a driver, aged 26 years having an income of Rs.20,000/- per month at the time of the accident.

5. Before the Tribunal, Exts.A1 to A11 were marked from the side of the petitioners and from the side of the third respondent, RW1 was examined and Exts.B1 to B5 were marked. After trial and hearing both sides, the Tribunal came to the conclusion that the accident occurred due to the negligence on the part of the first respondent and awarded a total compensation of Rs.14,97,960/- to the petitioners. The Tribunal found that the third respondent/insurance company has no liability as the policy does not cover a spare driver and therefore, exonerated the third respondent and



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allowed the petitioners to recover the compensation amount from respondents 1 and 2.

6. Heard Sri.Sheji P.Abraham, the learned counsel for the petitioners and Sri.Thomas Mathew Nellimoottil, the learned counsel for the third respondent.

7. The learned counsel for the appellants pointed out that as per Ext.B4 policy of insurance, it can be seen that the insurance company collected Rs.100/- towards "Add LL to paid driver, conductor, cleaner employed for oprn". The copy of the certificate of registration of the offending vehicle is marked as Ext.B2. Assistant Manager of the third respondent insurance company is examined as RW1. It is pertinent to note that there is nothing in the chief affidavit of RW1 to show that the deceased was a gratuitous passenger



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in the goods vehicle. According to RW1, the company denied the liability as the deceased was a spare driver and if the deceased was travelling as a cleaner in the vehicle, he would be entitled for the benefit of the policy issued in this case.

8. The learned counsel for the appellants invited my attention to Section 90 in the Central Motor Vehicles Rules, 1989 to point out that the national permit lorry shall have a minimum of two drivers and shall be provided with a seat across its full width behind the drivers seat providing facility for the spare driver to stretch himself and sleep. Section 90 in the Central Motor Vehicles Rules, 1989 reads thus :

"90. Additional conditions for national permit.

" The national permit issued under sub-section(12) of section 88 shall be subject to the following additional conditions,namely:



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(1)[All motor vehicles other than a trailer or modular hydraulic trailer] [Inserted by Notification No. G.S.R. 212 (E) dated 20.3.2015 (w.e.f. 1.4.2015)] plying under a national permit shall be painted in dry leaf brown colour with thirty centimetres broad white borders and the words National permit shall be inscribed on both sides of the vehicle in bold letters within a circle of sixty centimetres diameter:Provided that the body of a tanker carrying dangerous or hazardous goods shall be painted in white colour with a dry leaf brown ribbon of 5 centimetres width around in the middle at the exterior and that of the drivers cabin in orange colour.

(2)A board with the inscription National permit valid in the State(s) of with blue letters on white background shall be carried in front top of [such vehicles other than a trailer or modular hydraulic trailer for which the same shall appear on both sides of the vehicle] [Inserted by Notification No. G.S.R. 212 (E) dated 20.3.2015 (w.e.f. 1.4.2015)].

(3)No such vehicle shall carry any goods without a bill of lading in Form 50.



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(4)The vehicle shall have a minimum of two drivers and shall be provided with a seat across its full width behind the drivers seat providing facility for the spare driver to stretch himself and sleep:[Provided that this sub-rule shall apply to light motor vehicle and medium goods vehicles only from a date to be notified by the Central Government.] [Inserted by GSR 338(E), dated 26.3.1993 (w.e.f. 26.3.1993).]

(5)The vehicle shall at all times carry the following documents and shall be produced on demand by an officer empowered to demand documents by or under the Act, namely:

(i)Certificate of fitness,

(ii)Certificate of insurance,

(iii)Certificate of registration,

(iv)National permit,

(v)Taxation certificate,

(vi)Authorisation.

(6)The vehicle shall be subject to all local rules or restrictions imposed by a State Government.

(7)The vehicle shall not pick up or set down goods between two points situated in the same State [other than the home State] [Inserted by



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GSR 933(E), dated 28.10.1989 (w.e.f. 28.10.1989).]:[Provided that where such vehicle is registered in the National Capital Region, it shall not pick up or set down goods between two points situated in the National Capital Region unless it conforms to the mass emission standards [(Bharat Stage-IV) specified in sub-rule (15) of rule 115] [Inserted by GSR 37(E), dated 20.1.2009 (w.e.f. 20.1.2009).].]"

9. The third respondent/insurance company has no case that the owner of the vehicle has suppressed any material fact at the time of entering into the contract of insurance and it is also not disputed that the deceased was an employee of the owner of the vehicle and he was travelling in the cabin of the vehicle as a spare driver at the time of the accident. From Ext.B4, it can be seen that an additional premium of Rs.100/- is collected to cover the risk of driver,



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conductor and cleaner employed for the operation of the vehicle. In ***Sasikumar v. Lakshman (2016(1) KLT SN 41(C.No.40)***, this Court held that any contract of insurance to cover the risk in respect of the motor vehicles has necessarily to be in conformity with the other relevant provisions of the M.V.Act as well and never contrary to the same.

10. In ***N.K.V Bros.(P) Ltd. v. M.Karumal Ammal & Ors. [(1980) 3 SCC 457]***, the Hon'ble Supreme Court held that in accident cases, the Tribunal should not succumb to technicalities, niceties and mystic maybes and that innocent victims should not suffer and owners and drivers should not escape liability merely because there is some doubt here or obscurity, there. The said decision also shows that the benefit of doubt should go to the



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accident victim. It is well settled that beneficial legislations with social objective are expected to be interpreted in favour of those for whose benefit the said legislations are made. Considering the fact that additional premium is collected for covering the risk of driver, conductor and cleaner employed for the operation of the vehicle and in view of the fact that the deceased was travelling in the cabin of the vehicle as a spare driver employed by the owner of the vehicle, I find that the approach of the Tribunal exonerating the company from liability merely for the reason that the deceased is mentioned as a spare driver in the claim petition is not justified, especially in view of the additional premium collected in Ext.B4 policy to cover the risk of three persons, including



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conductor and cleaner. Therefore, I find that the finding of the Tribunal exonerating the third respondent/insurance company from liability is liable to be set aside.

11. Even though the petitioners claimed that the deceased was earning Rs.20,000/- per month as a driver, the Tribunal found no evidence to substantiate the said claim and fixed Rs.7,000/- as notional income. The decision of the Hon'ble Supreme Court in *Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. [(2011) 13 SCC 236]* and *Syed Sadiq and Others v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735 = 2014 KHC 4027]* shows that even in the absence of any evidence, the monthly income of an ordinary worker has to be fixed as Rs.4,500/- in respect of the accident occurred in the year 2004 and for the



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subsequent years, the monthly income could be reckoned by adding Rs.500/- each per year. If the monthly income of the deceased is calculated by adopting the above principle, it will come to Rs.9,500/- as the accident occurred in the year 2014. The learned counsel for the appellants pointed out that the monthly income fixed as per the said decisions is for an ordinary worker without any skills and in this case, it has come out in evidence that the deceased was a driver by profession, which is a skilled employment. Therefore, in this case, a slightly higher monthly income than that is usually taken for unskilled workers can be accepted. Therefore, I find that the monthly income of the deceased at the time of the accident can be fixed at Rs.10,000/- for assessing the compensation. The decision of the



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Hon'ble Supreme Court in ***National Insurance Co.Ltd. v Pranay Sethi [(2017) 16 SCC 680]*** and ***Jagdish v. Mohan [(2018) 4 SCC 571]*** shows that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals and in case of a self-employed person, an addition of 40% of the established income should be made where the age of the victim at the time of the accident was below 40 years.

12. The Tribunal accepted 17 as the multiplier applicable and deducted 50% of the income towards the personal and living expenses of the deceased by following the decision of the Hon'ble Supreme Court in ***Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]***. Thus while reassessing the compensation for loss of



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dependency as per the revised criteria, the amount would come to Rs.14,28,000/- $[(10,000 + 40\%) \times 1/2 \times 12 \times 17]$.

13. The decision of the Hon'ble Supreme Court in ***Pranay Sethi (Supra)*** would show that the reasonable amount payable on conventional heads namely Loss of Estate, Loss of Consortium and Funeral Expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively and that the aforesaid amount should be enhanced by 10% in every three years. The Hon'ble Supreme Court in ***Rojalini Nayak & Ors v. Ajit Sahoo (2024 KHC Online 8300)*** by adopting the above metric awarded a compensation of Rs.48,400/- towards Loss of Consortium and Rs.18,150/- each towards Funeral Expenses and Loss of Estate. Therefore, the amount awarded by the Tribunal towards Funeral Expenses



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and Loss of Estate will be modified to Rs.18,150/- each and the first petitioner will also be entitled for Rs.48,400/- towards Loss of Consortium. The decision of the Hon'ble Supreme Court in ***Shriram General Ins.Co.Ltd. v. Bhagat Singh Rawat (2023 KHC Online 7244)*** shows that the compensation under the heads of Loss of Love and Affection and Loss of Consortium cannot be granted to each legal representative of the deceased and in view of the said position, the first petitioner is not entitled for a separate amount towards Loss of Love and Affection.

14. In conclusion, the enhanced amount of compensation, as modified as a result of the above discussion is encapsulated, in a tabular format herein below :



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Sl No	Particulars	Compensation awarded by the Tribunal (Rs.)	Final Amount Payable
1	Transporation to hospital	Rs.5,000.00	Rs.5,000.00
2	Damage to clothing	Rs.1,000.00	Rs.1,000.00
3	Funeral Expenses	Rs.25,000.00	Rs.18,150.00
4	Treatment and medical expenses	Rs.2,70,960.00	Rs.2,70,960.00
5	Pain and suffering	Rs.15,000.00	Rs.15,000.00
6	Loss of dependency	Rs.10,71,000.00	Rs.14,28,000.00
7	Loss of Love and Affection	Rs.1,00,000.00	Nil
8	Loss of Estate	Rs.10,000.00	Rs.18,150.00
9	Loss of Consortium	Nil	Rs.48,400.00
	Total Amount Payable	Rs.14,97,960/-	Rs.18,04,660/-

15. Accordingly, the total amount of compensation payable to the petitioners is determined as Rs.18,04,660/-. The finding in the impugned award exonerating the third respondent/insurance company from liability is set aside.



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In the result, this appeal is allowed, and the appellants/petitioners are allowed to recover the compensation amount of Rs.18,04,660/- (Rupees Eighteen lakhs four thousand six hundred and sixty Only) with interest @ 9% per annum from the date of the claim petition till the date of realization with proportionate costs from the respondents. The third respondent/Insurance company shall deposit the said amount together with interest and costs before the Tribunal within a period of three months from the date of receipt of a certified copy of this judgment.

Sd/- JOHNSON JOHN, JUDGE.