

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944

MACA NO. 3884 OF 2022

[AGAINST THE AWARD DATED 10.10.2019 IN OP(MV)NO.1472/2017 ON THE
FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA]

APPELLANT/PETITIONERS:

- 1 BIJUMON, AGED 50 YEARS, SON OF CHERIYA,
PADINJAKARA HOUSE, ELINJIPRA DESOM, VILLAGE AND P.O,
THRISSUR DISTRICT - 680721.
- 2 ALICE, WIFE OF BIJUMON AGED 47 YEARS,
PADINJAKARA HOUSE, ELINJIPRA DESOM, VILLAGE AND P.O,
THRISSUR DISTRICT - 680721.
- 3 ABHIMOL BIJUMON, DAUGHTER OF BIJUMON, AGED 20 YEARS,
PADINJAKARA HOUSE, ELINJIPRA DESOM, VILLAGE AND P.O,
THRISSUR DISTRICT - 680721.

BY ADV A.N.SANTHOSH

RESPONDENT/RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD.
BRANCH OFFICE, THRISSUR- 680 001,
REPRESENTED BY ITS MANAGER.

BY ADVS. P.JACOB MATHEW
MATHEWS JACOB (SR.) (M-186)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.

JUDGMENT

This is an Appeal filed by the unfortunate parents and sibling of a young child, who died in a road accident in the year 2017. They impugn the Award of the Motor Accidents Claims Tribunal, Irinjalakkuda (hereinafter referred to as 'the Tribunal' for short), in OP(MV) No.1472/2017, which has granted a compensation of Rs.5,30,000/-, against their claim for Rs.28,35,000/- - limited to Rs.13,00,000/-; and assert that the compensation awarded under the head 'Loss of Dependency' is extremely exiguous.

2. Sri.A.N.Santhosh - learned counsel for the appellants, argued that, since there is no dispute regarding the accident, or the negligence of the driver of the offending vehicle, or the death of the young child, the Tribunal ought to have granted an amount of

Rs.4,50,000/- under the head 'Loss of Dependency', as had been claimed. He argued that, however, instead of doing so, the Tribunal has adopted the notional income of the child as Rs.40,000/- per annum and then deducted 1/3 towards 'Personal Expenses', which was impermissible, going by the various precedents covering the field. He thus prayed that the Award of the Tribunal be set aside to the extent assailed and the compensation enhanced.

3. In response, Sri.P.Jacob Mathew - learned Standing Counsel for the Insurance Company, submitted that the binding precedents, including that of the Honourable Supreme Court, would render it indubitable that only an amount of Rs.30,000/- per year has been taken as the notional income of a child, for computing compensation under the head 'Loss of Dependency' by Courts in the past. He pointed out that the

latest of the judgments, which lends light in this area is *Meena Devi v. Nunu Chand Mahto @ Nemchand Mahto* [(2023) 1 SCC 204], in the case of death of a 12½ old child in the year 2003, the notional income was adopted as Rs.30,000/-; while in *Rajendra Singh & Others v. National Insurance Co. Ltd. & Others* [(2020) 7 SCC 256], in the case of an identically aged child, who died in an accident in the year 2012 - though an amount of Rs.36,000/- per annum was taken as the notional income, one half was deducted towards 'Personal Expenses'. He thus prayed that this Appeal be dismissed because, going by the final computation, the compensation awarded is just and proper.

4. I have considered the afore rival submissions on the touchstone of the evidence on record - copies of which have been handed over across the Bar by the learned counsel for the

parties with the express consent that it can be acted upon by this Court without dispute.

5. As correctly argued by Sri.A.N.Santhosh - learned counsel for the appellants, the Tribunal has adopted the notional income of the deceased child to be 40,000/- per annum, but has then made a further deduction of one third towards personal expenses. Such a deduction is not permissible generally, though in *Rajendra Singh* (supra), it was done, but only on the peculiar facts involved in the said case. Otherwise, other judgments, which are available for my guidance, would render it indubitable that no such deduction had been made.

6. That said, in *Kurvan Ansari Alias Kurvan Ali v. Shyam Kishore Murmu* [(2022) 1 SCC 317], which is a judgment delivered in the year 2021, the notional income of a seven year old child, who died in an accident in the year 2004, was

fixed as Rs.25,000/-; while, in *Kishan Gopal and Another v. Lala and Others* [(2014) 1 SCC 244], relating to the death of a 10 year old child in the year 1992, the Hon'ble Supreme Court took the notional income to be Rs.30,000/-. Thereafter, in *Rajendra Singh* (supra), as I have said above, the notional income was taken as Rs.36,000/-, though a deduction was made therefrom; while, in *Meena Devi* (supra), the notional income was adopted to be Rs.30,000/- for a 12 year old child in the year 2003, when she unfortunately died in an accident.

7. The afore would render it ineluctable that it will be justified and prudent for this Court to adopt Rs.30,000/- as the notional income of the deceased child in this case; in which event, the compensation as claimed by the appellants would become eligible to them under the head "Loss of Dependency".

In the afore circumstances, I partly allow this Appeal and enhance the compensation under the head "Loss of Dependency" as Rs.4,50,000/- (Rupees four lakhs fifty thousand only), instead of Rs.4,00,000/- as awarded by the Tribunal.

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

Needless to say, the appellants 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 8%, 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.

Sd/-

DEVAN RAMACHANDRAN

JUDGE