

(2016) 03 KL CK 0173

In the High Court Of Kerala

Case No : M.A.C.A. No. 375 and 391 of 2011

Dr. Thomas George P.

APPELLANT

Vs

O.Santha

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) AAC 2357 : (2017) 1 ACC 545 : (2016) 3 ILRKerala 451 :
(2016) 3 KerLJ 402 : (2016) 3 KLT 853 : (2016) 4 TAC 518

Hon'ble Judges : Mr. C.T. Ravikumar and Mrs. Mary Joseph, JJ.

Bench : Division Bench

Advocate : Sri. C.M. Tomy Sri. Mathew Skaria Sri. K.J. Josemon, Advocate, for the Appellant; Sri. M. Jacob Murickan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. C.T. Ravikumar, J.—These appeals arise from the award dated 20.10.2010 in O.P.(MV)No.1567/07 of the Motor Accidents Claims Tribunal, Kottayam. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short "M.V. Act") seeking compensation for the death of one Sherly.V.Sebastian occurred on 16.05.2007 in a motor vehicle accident, by the legal heirs of the deceased, who are respectively the widower and the minor daughter. The Tribunal passed the impugned award for an amount of Rs. 30,00,000/- with interest at the rate of 7.5% per annum from the date of petition (18.10.2007) till payment and also with a cost of Rs. 40,000/-. In fact, the Tribunal passed such an award for Rs. 30,00,000/- after arriving at a finding that the appellants are entitled to get a compensation of Rs. 37,57,500/- solely for the reason that they had limited their claim to Rs. 30,00,000/-. The former appeal has been preferred by the claimants seeking enhancement of the compensation whereas the latter appeal has been preferred by the insurer of the offending vehicle viz., the third respondent in the former appeal contending that the amounts awarded by the Tribunal as per the impugned award under different

heads are exorbitant and therefore, liable to be interfered with.

2. The deceased Sherly was the Acting Principal of St.Mary's Higher Secondary School, Pariyapuram in Perinthalmanna which is an aided school. She was a foot passenger when she met the accident that doomed her life. It occurred thus:- On 16.05.2007 at about 5.40 P.M. she was walking through Cheruthuruthi - Kulapully public road in Shornur Municipality. The offending vehicle which is a bus bearing Reg.No.KL 9J 432 driven by the second respondent knocked her down and its wheel ran over her body. She died instantaneously. In the claim petition it was averred that she was then aged 39 years and was drawing a monthly salary of Rs. 20,650/-. It was further stated therein that the appellants were then aged 40 years and 4 years respectively. It was in such circumstances that the aforesaid claim petition was filed seeking a compensation of Rs. 32,04,000/-, but limiting it to Rs. 30,00,000/-.

3. Obviously, no oral evidence was tendered by either side and on behalf of the appellants Exts.A1 to A9 were got marked. No documentary evidence was also adduced by the respondents. The Tribunal upon evaluating the evidence on record and appreciating the rival contentions passed the impugned award, as aforesaid. Parties to both the appeals are the same though their status differ. Since the appeals arise from the same award with divergent contentions they were heard jointly and are being disposed of by this common judgment. Hence, for the sake of convenience, they are referred to hereafter in this judgment in accordance with their respective status in the former appeal unless otherwise specifically mentioned. We have heard the learned counsel for the appellants and the learned counsel for the 3rd respondent-insurer. Though notices were served on respondents 1 and 2 they have not chosen to enter appearance and to resist the appeals.

4. Essentially, the main contention of the appellants claimants is that the Tribunal went wrong in fixing the multiplicand for the purpose of calculating the compensation for loss of dependency. It is contended that at the relevant period the deceased was getting Dearness Allowance only at 40% of the Basic Pay and the same has since been enhanced to 78% and a pay revision order had also come into force in the year 2011. In short, according to the appellants, within a period of about 3 years since the death of Sherly V. Sebastian there occurred about 50% of increase in the salary attached to the post held by her. Therefore, according to them, the addition of 50% of the actual income reckoning the future prospects which the deceased would have had is inadequate and such addition ought to have been much more than that. It is to be noted that the claimants/appellants got no grievance with respect to the multiplier fixed by the Tribunal and in fact, it was correctly fixed with reference to the age of the deceased. The learned counsel appearing for the appellants further contended that towards funeral expenses only Rs. 3,000/- was granted by the Tribunal against a claim of Rs. 20,000/-. So also, towards loss of consortium only an amount of Rs. 15,000/- was granted against a claim of Rs. 40,000/- and against a claim of Rs.

1,00,000/- towards loss of love and affection only an amount of Rs. 15,000/- was granted. The learned counsel relied on the decision of the Honourable Apex Court in *Rajesh v. Rajbir Singh* reported in 2013 (3) KLT 89(SC) to contend that compensation granted under those heads requires upward modification. It is also contended that no amount was granted under the head "pain and sufferings". It is further contended that only an amount of Rs. 5,000/- was granted under the head loss of estate.

5. As noticed hereinbefore, the latter appeal has been preferred by the insurer of the offending vehicle viz., the third respondent in the former appeal. The core contention of the third respondent - insurer is that no amount ought to have been granted under the head "loss of dependency" and virtually, the appellants are entitled only to get compensation for loss of estate. The said contention is founded on the admitted fact that the first appellant who is the husband of the deceased is a Civil Surgeon. Essentially, the essence of the contention is that since he being a Civil Surgeon he could not have been and should not have been treated as a dependent of the deceased and since the second appellant is dependent on the first appellant she too was not entitled to get compensation under the head loss of dependency. The learned counsel appearing for the third respondent further contended that since the deceased was an income tax assessee the amount liable to be paid towards income tax ought to have been deducted while fixing the multiplicand for the purpose of calculating the compensation under the head loss of dependency, if at all the appellants are to be paid under that head. The Tribunal failed to effect any deduction though it was bound to effect such a deduction in the light of the decision of the Honourable Apex Court in *Sarla Verma v. Delhi Transport Corporation* reported in 2010 (2) KLT 802 (SC) while assessing compensation thereunder, it is contended, virtually, as an alternative contention. It is in the said circumstances that exorbitant estimation of compensation was raised by the third respondent.

6. As noticed hereinbefore, both the appellants and the third respondent got grievance regarding the fixation of multiplicand by the Tribunal for the purpose of assessing compensation under the head "loss of dependency". But, the first question to be decided, in the light of the aforementioned contentions of the third respondent, is whether the claimants are entitled to get compensation under that head ? In other words, the question is, in case of death of one of the spouses in a motor vehicle accident whether the surviving spouse, if employed, would be entitled to get compensation under the head "loss of dependency" ? In case there is a surviving minor child whether compensation for loss of dependency could be denied to that child on the ground that he/she is under the guardianship of the said surviving parent, is the allied question that crops up for consideration in the light of the contentions. In the light of the contentions thus raised, we are of the view that it is inevitable to have a survey on the various decisions dealing with the question of computation of compensation for loss of dependency to resolve the said puzzling questions founded on the factual position that the surviving spouse was not financially dependent on the deceased.

7. The constant and consistent view of the Honourable Apex Court in the matter of calculation of compensation payable under the head loss of dependency would undoubtedly reveal that for the purpose of effecting such a calculation the contribution from the part of the deceased spouse, either by way of actual monetary contribution or gratuitous service equated in terms of money has to be taken as the starting point for such assessment. In the decision in *Lata Wadhwa v. State of Bihar* (AIR 2001 SC 3218) it was held that for the purpose of computing the compensation for "loss of dependency", in the case of death of housewives belonging to the age group of 35-59 years their services to the family concerned could be equated in terms of money and on modest estimation it was fixed notionally as Rs. 3,000/-, per month. In the case of housewives above the said age group it has to be taken as Rs. 2,000/-, going by that decision. The decision would thus give sufficient indication that for the purpose of calculating the compensation for loss of dependency in a claim for compensation for the death of a house-wife the fact that she was actually not an earning member is irrelevant and even in the absence of her financial contribution to the family her gratuitous services to the dependents have to be equated in terms of money as a starting point for calculation. In such circumstances, how can one say that pure financial dependency is the sole yardstick to decide the entitlement to compensation under the head "loss of dependency" though during the aforesaid mode of calculation also the gratuitous services to the dependents get equated in terms of money. Now, the question is whether an employee having permanent income for that reason alone could be held not entitled to claim compensation for loss of dependency on the death of his/her employed or unemployed spouse ? Section 166 of the M.V. Act says that an application shall be made on behalf of or for the benefit of the legal representatives of the deceased. Section 168 of the M.V. Act says that the Claims Tribunal is empowered to rather, duty bound to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid. This provision really takes the place of third paragraph of Section 1-A of the Fatal Accidents Act, 1855 which provides that in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action was brought. The purpose of providing compensation for death is to indemnify persons who were actually dependent on the deceased. In *Khodabhai Bhagwanbhai and others v. Hirji Tapu and another* (1980 A.C.J. 237) a Division Bench of the High Court of Gujarat while dealing with a claim arising from the death of wife of the appellant therein referred to *Kemp & Kemp on Quantum of Damages*, Volume-1, where the heads of pecuniary loss which could arise for the husband on the death of his wife were catalogued thus:-

- (1) Loss of wife's contributions to household from her own earnings.
- (2) Expenses of employing a housekeeper or servant to perform services which wife had rendered gratuitously.

- (3) Expenses of providing boarding and lodging for such housekeeper or servant.
- (4) Additional expenses caused by having household run by housekeeper or servant instead of wife.
- (5) Expense of furnishing room and providing requisite amenities for housekeeper or servant.
- (6) Expense of sending children away to boarding school.
- (7) Expense of buying children's clothes etc. mentioned instead of having them caed for and mended by wife.
- (9) Having to ear meals out instead of having them cooked by wife.
- (10) Loss of element of security where husband's employment was insecure, or his health bad, and where wife had been accustomed to go out to work to keep the home going when husband was not working, etc. "

The Court then went on to observe thus:-

"Thus all these facts have got to be kept in view while determining the damages on account of the untimely death of the wife and then the economic loss is to be ascertained for those who are left behind. Under the circumstances, it is not as if that the accidental death of a non-earning wife means nothing to her dependants and other family members and the economic loss to them would be practically nil as assumed by the Tribunal in the present case. If the deceased wife was earning then her earning would certainly be considered for computing the net economic loss to her family members. But, even if she was not earning, the gratuitous services rendered by her would now be required to be substituted by other modes which will have their own economic importance and value and that the pecuniary benefit from these services in the domestic front as well as in the agricultural operation of the husband when the wife may have acted as a helpful hand as in the present case will have to be assessed on the totality of all circumstances and a proper figure of multiplicand has to be arrived at, and having considered the relative ages of the wife and the husband and the dependants a proper multiplier has to be adopted."

(emphasis supplied)

As held by the High Court of Punjab and Haryana in *Bhagwan Dass v. Anand Pal* (AIR 1985 Punjab and Haryana 126) there is no retirement age for a housewife. True that the term "housewife" means a married woman who manages the affairs of her own house-hold as a full-time occupation and therefore, an employed woman cannot fall under that expression. But, as held in *Bhagwan Dass*" case (supra) a house-wife works in the house as long as she is physically capable of doing so and old ladies, working in the house are a common feature in our society. The aforesaid observations in the said decision is noteworthy and relevant even in the case of an employed woman especially taking note of the retirement age, in any service, and the present average life expectancy of an

Indian. If nothing untoward happened she would survive the age of superannuation to do the role of a housewife for the rest of her life. Another aspect also assumes relevance in view of the common feature of our society. In our society seldom one can see a married woman shuns of her domestic duties solely because of being employed. The point is that such women used to find time to do the domestic duties viz., the gratuitous service to the family members. Therefore, even in the case of death of an employed wife the widower, even if employed, would have to face the pecuniary loss as catalogued by Kemp and Kemp on Quantum of Damages, Volume-1 extracted in Khodabhai Bhagwanbhai's case (supra). In such circumstances, on the death of wife the husband will certainly lose such gratuitous services and they can be replaced only by incurring expenditure. But, in troth, services by wives are not substitutive and any such attempt, incurring expenditure, virtually recurring expenditure will definitely fall short of the self sacrificing and selfless, service of the better half. As regards a child the benefit of a mother's personal attention for its upbringing, morals, education and psychology could never be provided by the services of a housekeeper, nurse or servant. Apart from the loss of such services in the case of an employed wife, with her death, her financial contribution to the family would also cease. How can in such circumstances, on the death of an employed woman the husband be deprived of compensation under the head "loss of dependency" merely because he is employed ?

8. When two persons of opposite gender enter into a connubial relationship certainly mutual dependency would also begin. The dependency on the other would get more and more when they get older and older. Therefore, in the case of a widow/widower, he/she should be presumed to have been required to depend on the other during the whole of life time in the absence of any evidence to the contrary and how long the deceased could have supported, certainly would depend upon the estimate of expectancy of his/her future span of life. In the said circumstances, the age of the deceased on the date of the accident, his/her health and estimate of the years during which he/she would have continued to earn, are also equally important and relevant factors. In motor accident cases dependency and compensation are variable factors depending on facts. In a fatal accident, the life of the victim is cut short by rash and negligent driving of the offending vehicle and the surviving spouse and/or other dependents is/are deprived of the earnings of the deceased or the particular service being rendered, in addition to the consequent mental and emotional agony and invariably the breaking down of the family fabric. Therefore, estimated income should be multiplied by the number of years by which the life of the deceased is estimated to be cut short, certainly by adopting the apt multiplier applicable to the deceased and that would be the fair capitalised amount of compensation to which the dependents may be entitled. In other words, by and large the Courts have been determining the amount of compensation for loss of dependency by capitalising the likely monthly contribution of the deceased for the maintenance of his/her family for the years by which his/her life expectancy was cut short as a

result of the accident. In the contextual situation and in the light of the nature of the contentions taken by the respondents it is also appropriate to refer to the decisions in *Ramji Das and Anr. v. Sham Singh and Ors.* (1971 ACJ 468), *Ishwar Devi Malik and Ors. v. Union of India* (1968 ACJ 141), *Chander Mohan v. D.C.Kapur* (1970 ACJ 121) and *Kuldip Lal Bhandari v. Umed Singh* (1966 ACJ 119). In *Ramji Das's* case (supra) the High Court of Delhi held that the compensation ought to be determined on the basis of the dependency of the claimants on the deceased. In that case, though it was observed that none out of the claimants could be considered dependent on the deceased for his or her maintenance as the two daughters were married and were maintained by their husbands and the son was in Government service, the court allowed the compensation awarded by the Tribunal to stand, but, at the same time, effected a reduction taking into account the lack of dependency of the claimants. In *Ishwar Devi Malik's* case (supra) most of the children were aged above 18 years and therefore, could not have been strictly considered as depending upon the deceased father for their maintenance. Even after coming into such a conclusion the court calculated the compensation for them not on the basis of their dependency, but by capitalising their share in the likely monthly contribution by the deceased for the maintenance of the family for the years by which his life expectancy stood cut short by the accident. In *Chander Mohan's* case (supra) among the claimants there were major children and they were denied compensation only because compensation was claimed for the gratuitous service and company of the deceased mother. It was held therein that the sons who were major and were in service and were living away from the mother could not be held to have suffered any loss on account of their being deprived of the services of their mother and her company. But, as regards the minor children, there is no warrant for the contention that the dependency of the minor children on the deceased would come to an end on their becoming sui juris because the liability of the parents extends not only to their food and clothing but to the giving of good education and for arranging their marriages for which at times even their total life saving would fall short. In *Kuldip Lal Bhandari's* case (supra) the court negated the contention that no provision need be made for the sons and the daughters after they become sui juris. The court observed:-

"The learned counsel for the respondents maintained that after the son (Appellant No.2) attains the age of majority, he would probably start earning himself and the daughter (Appellant No.3) would also get married in due course, and he submitted that it was unnecessary to make provision for them for as many as 19 years after the date of the institution of the suit. However, an essential consideration, which has to be kept in mind in such cases, is of the financial benefit of which the family can reasonably be said to have been deprived by the span of the life of the deceased having been cut short on account of the fatal accident. At the time of the institution of the suit the two children were of tender years and were under the guardianship of their father and we have to consider the claim of the family as a whole."

(emphasis added)

9. In this context, it is to be noted at the outset that we made the observation that in motor accident cases dependency and compensation are variable factors depending on facts and also that growing of age usually makes the spouses more dependent on one another and therefore, in the case of a widow/widower he or she should be presumed to have been required to depend on the other during the rest of his life. Such dependency is certainly one which is in addition to financial dependency and even independent of it viz., in the absence of such dependency the right to get compensation for the loss of services, as mentioned hereinbefore, has to be equated in terms of money for the said purpose. In such circumstances, merely because the surviving spouse is employed cannot be a reason for holding that he or she would not have been required to depend on the other during the rest of his life and therefore, dis entitled to get compensation under the aforesaid head. In the case on hand, it is to be noted that the deceased was aged only 39 years at the time of death and the first appellant, the husband was aged only 40 years, at that time. As regards the 2nd appellant, she was only 4 years when she lost her mother. As has been observed in Chander Mohan's case (supra) merely because a minor child became sui juris his/her dependency would not come to an end thereby as the liability of the parents extends not only to the food and clothing but to the giving of good education and for arranging marriages. This would become more relevant when the surviving minor child is a daughter. This is because even after giving her in marriage she would have to depend on her mother and require the maternal care while in the family way, as well. In such circumstances, merely because at the time of the institution of the claim petition the 2nd appellant was under the guardianship of the father cannot be a reason to contend that she was not dependent on the mother and therefore, she is not entitled to get compensation under the head "loss of dependency". In this case, the 2nd appellant-daughter is still a minor. In short, taking into account all such aspects we are of the view that the contention of the 3rd respondent-insurer that the appellants are not entitled to get compensation under the head "loss of dependency" cannot be sustained and it is absolutely bereft of any basis and merit.

10. When once it is found that the appellants are entitled to get compensation for loss of dependency the contention of the third respondent - insurer that the amount payable towards taxation was not deducted and the contention of the claimants/appellants that more than 50% of the actual income ought to have been added reckoning the future prospects would become points for consideration. As noted earlier, the appellants raised such a contention based, mainly, on twin reasons viz., at the time of the accidental death of Sherly V. Sebastian the Dearness Allowance was only 40% of the basic pay and subsequently, it was enhanced to 78% and further that after her death a pay revision has to come into force in the year 2011. In the wake of such contentions the question is whether the Tribunal has correctly fixed the multiplicand taking into account the salary certificate and also with reference to the binding

decisions on the aforesaid subject. In the context of the aforesaid rival contentions it is relevant to refer to the decision of the Honourable Apex Court in Sarla Verma's case (supra).

11. We will consider the merit of the rival contentions in the light of the decision in Sarla Verma's case (supra). Going by the decision in Sarla Verma's case (supra), 50% of the actual income has to be added reckoning the future prospects in the case of a salaried person below the age of 40 years and taking into account marital status of the deceased or the number of dependents, whichever is applicable in a given case, a particular portion of the actual income has to be deducted towards personal expenses of the deceased. That apart, going by the decision the actual income of the deceased less the income tax should be the starting point for calculating the compensation under the head "loss of dependency". In this case, Ext.A8 salary certificate would reveal that at the relevant point of time the deceased was drawing an amount of Rs. 20,650/-. Paragraph 13 of the impugned award would reveal that the Tribunal fixed the multiplicand with reference to the decision in Sarla Verma's case (supra). The Tribunal took the entire amount shown in Ext.A8 certificate as the monthly income for the purpose of calculation without effecting any deduction. In the light of the decision in Sarla Verma's case (supra), upon taking into account the fact that the deceased was a salaried person, aged below 40 years 50% of the amount mentioned in Ext.A7 was added to that actual income. The learned counsel appearing on both sides submitted that 7rd of the actual income was deducted correctly applying the decision in Sarla Verma's case (supra). Taking into account the number of dependents viz., two, it can only be said that the Tribunal has correctly effected deduction of 7rd of the actual income in terms of the dictum laid down therein. Still, the question is whether the decision in Sarla Verma's case (supra) relating to the fixation of multiplicand for the purpose of calculating compensation for "loss of dependency" was properly applied by the Tribunal ? In the light of the said decision the actual income of the deceased less the income tax should be the starting point for calculating the compensation. Admittedly, the monthly income of the deceased was Rs. 20,650/- and therefore, the annual income is in the taxable range. She was a tax payee. At any rate, her liability to pay tax cannot be disputed taking into account her annual income and also of the fact she was an aided school teacher being paid by the Government. In the light of Ext.A8 salary certificate the actual annual income of the deceased was Rs. 2,47,800/- in the assessment year 2007-2008, for the purpose of payment of tax. The tax payable for the annual income at that period was Rs. 20,662/-. Hence the said amount should have been deducted from the annual income and that should have been the starting point for calculating the compensation going by paragraph 25 of the decision in Sarla Verma's case (supra). Hence, the contention of the 3rd respondent on this point is well founded. The Tribunal, certainly, erred in not deducting the tax payable from the actual income while fixing the multiplicand in the light of the fact that the deceased was a salaried person, below the age of 40 years. In this case, on

deducting the tax payable from the annual income the reckonable annual income would be Rs. 2,27,138/-. In the light of the said decision, since the deceased was a salaried person and below the age of 40 years, 50% of the same ought to have been added and then 3rd of the same ought to have been deducted towards personal expenses to fix the multiplicand for the purpose of calculating the amount payable under the head "loss of dependency". The step to be followed by virtue of the decision in Sarla Verma's case (supra) is not at all disputed. But, as noticed hereinbefore, the contention of the appellants is that the addition to be effected reckoning the future prospects in the case on hand, should not have been limited to 50% of the actual income and it ought to have more than the same in view of the facts that at the time of the accidental death of Sherly V. Sebastian the Dearness Allowance was only 40% of the basic pay and subsequently, it was enhanced to 78% and further that after her death a pay revision had come into force in the year 2011. We are of the considered view that the said contention is palpably, unsustainable in the light of the very decision in Sarla Verma's case (supra). A glance at paragraphs 45 to 47 of the said decision would reveal its untenability. They read thus:-

"45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the nonexistence of such evidence at the time of accident.

46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales.

47. If the contention urged by the claimants is accepted, it would lead to the following situation: The claimants only could rely upon the pay scales in force at the time of the accident, if they are prompt in conducting the case. But if they delay the proceedings, they can rely upon the revised higher pay scales that may come into effect during such pendency. Surely, promptness cannot be punished in this manner. We therefore reject the contention that the revisions in pay scale subsequent to the death and before the final hearing should be taken note of for the purpose of determining the income for calculating the compensation."

In such circumstances, having made the deduction towards tax payable addition of 50% reckoning the future prospects and deduction taking into account the number of dependants, has to be made to arrive at the correct multiplicand. Such calculation would make Rs. 2,27,138/- as the appropriate multiplicand, in this case. As noticed hereinbefore, with reference to the age of the deceased the multiplier to be applied was 15 and it was correctly identified by the Tribunal. Therefore, the compensation for loss of dependency would be Rs. 34,07,070/-. In this case, the Tribunal owing to the mistake committed by not effecting any deduction taking into account the amount payable towards tax calculated the amount of compensation under the head "loss of dependency" as Rs. 37,17,000/-. In such circumstances, the appeal preferred by the 3rd respondent/appellant viz., M.A.C.A. No.391 of 2011 is to succeed to that extent. At the same time, the entitlement or otherwise of the appellants for enhancement of compensation under the other heads, has to be decided. The learned counsel appearing for the appellants contended that towards "funeral expenses" the Tribunal granted only Rs. 3,000/-. So also, it is contended that under the heads "loss of consortium" and "loss of love and affection" only an amount of Rs. 15,000/- each, was granted by the Tribunal. The inadequacy of the compensation under the said heads is canvassed in the light of the decision of the Hon'ble Apex Court in *Rajesh v. Rajbir Singh* (2013 (3) KLT 89(SC)). In the light of the said decision in *Rajesh's* case in the absence of any evidence of higher expenses, the minimum amount payable towards funeral expenses is Rs. 25,000/-. In this case, the Tribunal granted only Rs. 3,000/-. Hence, we award an amount of Rs. 22,000/- more under the said head to the appellants. In the light of the same decision only the surviving spouse is entitled to get compensation for loss of consortium. The Hon'ble Apex Court held that a minimum of Rs. 1,00,000/- should be the compensation payable under the head "loss of consortium". In this case, the first appellant did not bring out any circumstance to establish that he is entitled to get more than Rs. 1,00,000/- under the said head. The Tribunal granted only an amount of Rs. 15,000/- under the said head. In the circumstances, the first appellant is entitled to get an amount of Rs. 85,000/- more under the head "loss of consortium". Needless to say, in the light of the same decision that the husband cannot claim compensation under the head "loss of love and affection" as the relevant aspects which are to be considered under the said head were considered for granting compensation to him under the head "loss of consortium". But, that does not mean that the 2nd appellant is not entitled to get compensation under the said head. As noticed hereinbefore, she was hardly four years at the time of the death of her mother. A close scrutiny of the decision in *Rajesh's* case (supra) would reveal that no dictum, as such, was laid down by the Hon'ble Apex Court with respect to the grant of compensation under the head "loss of love and affection" therein. But, at the same time, in that case, taking note of the fact that among the surviving dependents two minor children were there, they were granted altogether an amount of Rs. 1,00,000/-. In such circumstances, in this case, taking into account the aforesaid aspects the 2nd appellant is entitled to get an

amount of Rs. 50,000/-. But then, the Tribunal has granted Rs. 15,000/- only under that head. Therefore, the 2nd respondent is entitled to get only Rs. 35,000/- additionally under that head. Towards damages to clothing an amount of Rs. 10,000/- was claimed, but, the Tribunal granted only Rs. 500/-. Taking into account the nature of the injuries to which Sherly. V. Sebastian succumbed it is evident that the dresses worn by her must have got damaged. In such circumstances, we are inclined to grant Rs. 500/- more under the said head. Though learned counsel for the appellants contended that the compensation granted under the head "loss of estate" is too meagre, we are of the view that the appellants have not made out a case so as to persuade us to grant any further amount over and above the conventional amount granted by the Tribunal. The learned counsel also canvassed the position that though an amount of Rs. 20,000/- was claimed under the head "pain and sufferings" the Tribunal did not grant any amount under that head. Though the death was almost instantaneous we are of the view that the conventional amount of Rs. 5,000/- can be granted under the said head for the excruciating pain she suffered at least for a few minutes, when the wheels ran over her.

12. We have already found that the Tribunal has committed a mistake in calculation of the amount payable under the head "loss of dependency" by not deducting the tax payable while fixing the multiplicand and based on such erroneous estimation instead of Rs. 34,07,070/- the Tribunal fixed the compensation under the said head as Rs. 37,17,000/-. In view of the aforesaid conclusions and findings the appeal preferred by the 3rd respondent insurer stands allowed in part by reducing the amount of compensation payable under the head "loss of dependency" Rs. 37,17,000/- to Rs. 34,07,070/-. As regards the appeal preferred by the claimants/appellants one another aspect also requires deep consideration. The question is merely because a claimant limited his claim for compensation whether it was within the jurisdiction of the Tribunal to grant compensation in excess of what was claimed when it is found that the compensation to which the claimant is entitled is more ? The compensation payable in a claim under Section 166 of the M.V.Act is "just compensation", by virtue of the provisions under Section 168 of the Motor Vehicles Act. The mere fact that the claimants made only a claim for a lesser compensation amount cannot be a reason for grant of higher compensation if the Tribunal ultimately found that the claimants are entitled to get more. Paragraph 19 of the decision of the Hon''ble Apex Court in Rajesh's case (supra) is relevant to refer in this context. It reads thus:-

"19. In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal/Court has a duty, irrespective of the claims made in the Application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the

claim made in the application for compensation."

13. Taking into account the fact that it is a social welfare legislation and especially, in the light of the decision in Rajesh's case (supra) the concern of the Tribunal ought to have been to grant just compensation and in that endeavour, it ought to have ignored the claim made in the application for compensation. In this case, though the appellants filed the claim petition for an amount of Rs. 32,04,000/- it was limited to Rs. 30,00,000/-. However, the impugned award would reveal that the Tribunal found that the appellants are entitled to get a compensation of Rs. 37,57,500/-. Solely taking into account the fact that the claimants/appellants limited their claim to Rs. 30,00,000/- the Tribunal passed the impugned award only for an amount of Rs. 30,00,000/-. This according to us, is a matter which is liable to be interfered with by this court in exercise of the appellate jurisdiction taking note of erroneous estimation, found hereinbefore. Though we have interfered with the erroneous estimation made by the Tribunal under the head "loss of dependency" we have found that the appellants were not granted due compensation in the light of the settled position of law under the heads "funeral expenses", "loss of consortium" and "loss of love and affection" and such other heads mentioned hereinbefore. Based on such reassessment made by us, the appellants are actually entitled to get an amount of Rs. 35,54,570/-. In the light of what we have held earlier though the appellants limited their claim to Rs. 30,00,000/- we award an amount of Rs. 35,54,570/-. In other words, the appellants are entitled to get an amount of Rs. 5,54,570/- over and above the amount granted by the Tribunal under the impugned award. Evidently, as per the impugned award that the 3rd respondent insurance company was directed to produce a cheque for Rs. 29,373/- towards court fee only for the award amount of Rs. 30,00,000/-. Since the Tribunal directed the insurance company to produce a cheque for Rs. 29,373/- solely because the award was limited to Rs. 30,00,000/-, towards court fee the Tribunal is directed to issue direction to the 3rd respondent company to produce another cheque towards due court fee for the additional amount of Rs. 5,54,570/-. Needless to say that if they have not already produced the cheque for Rs. 29,373/- towards court fee as has been directed by the Tribunal the insurance company has to produce a cheque towards court fee for the entire amount awarded as compensation, to the appellants. The 3rd respondent shall deposit the enhanced amount with interest at the rate of 8% per annum from the date of petition till realisation subject to the direction made hereinbefore, within a period of two months from the date of receipt of copy of this judgment. In case of failure on the part of the 3rd respondent to deposit the amount within the above stipulated period the entire amount remaining to be paid will carry interest at the rate of 9% from the date of petition. It is made clear that the first appellant alone is entitled to the entire amount granted under the head "loss of consortium" and the second appellant alone is entitled to the entire amount granted under the head "loss of consortium". The balance amount shall be apportioned between the appellants in the same manner, as has been directed under the impugned award

of the Tribunal. Since already there is a direction by the Tribunal under the impugned award to deposit the amount due to the 2nd appellant under the award in a Nationalised Bank till she attains the age of majority there will be a further direction to the 3rd respondent to deposit half of the enhanced amount as well in the name 2nd appellant in the same Nationalised Bank in which deposit was already effected under orders of the Tribunal, within the period mentioned hereinbefore. M.A.C.A. No.375 of 2011 is also allowed in part, as above. In the circumstances, there will be no order as to costs in both the appeals.