

(2016) 03 KL CK 0020

In the High Court Of Kerala

Case No : M.A.C.A No. 2037 and 2050 of 2011 and M.A.C.A No. 175 & 225 of 2012

National Insurance Co. Ltd.

APPELLANT

Vs

Fathimath Zuhara @ Zuhra Razak

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) AAC 2093 : (2017) 1 ACC 178 : (2016) ACJ 2742 : (2016) 3 ILRKerala 431 : (2016) 3 KerLJ 417 : (2016) 3 KLT 459

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

Bench : Division Bench

Advocate : Sri. Rajan P. Kaliyath, Advocate, for the Appellant; Sri. M. Sasindran, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

C.T. Ravikumar, J.—Seven friends exhilaratingly went for an excursion to Pondicherry in a Qualis Car bearing Reg. No.KL 02 K 8852. They were students of L.B.S. College of Engineering in Kasaragod. Little was known to them that it was the last trip as regards six among them. The mishap occurred on 10.9.2005 while passing through Pandi to Dindivanam main road at Thailapuram. A Container Lorry bearing Reg.No. TN 67/A 5059 hit against the Qualis Car and dragged it towards eastern side. Six of them succumbed to the injuries and the other survived with grievous injuries. Naturally, the legal heirs of the deceased persons moved for compensation under Section 166 of the Motor Vehicles Act and obtained awards of compensation. Now, the parents of two among them have come up in appeal in M.A.C.A. Nos.175 and 225 of 2012 soliciting enhancement of the quantum of compensation. M.A.C.A. NoS.175 and 225 of 2012 arise respectively from O.P.(M.V)Nos.590 of 2006 and 24 of 2008 on the files of the Motor Accidents Claims Tribunal, Kasaragod. M.A.C.A. Nos. 2037 & 2050 of 2011 are filed by the insurer of the offending vehicle involved in the said accident, respectively against the awards in O.P.(M.V)Nos.24 of 2008 and 590 of

2006. Obviously, these claim petitions were jointly considered and disposed along with four other claim petitions by a common award. In the said circumstances, all these appeals were jointly heard and are being disposed of by this common judgment. For the sake of convenience, the claimants-appellants are referred to in this judgment as "the appellants" and the insurer is referred to as "the 3rd respondent" unless otherwise specifically mentioned.

2. We have heard the learned counsel for the appellants as also the learned counsel appearing for the 3rd respondent.

3. As noticed hereinbefore, M.A.C.A. Nos.2037 & 2050 of 2011 are filed by the 3rd respondent. While the learned counsel for the appellants contended that it is the erroneous estimation of compensation under different heads, improper appreciation of the evidence on record and the failure to construe the authorities on different aspects involved in these cases properly, by the Tribunal that culminated in awards carrying totally inadequate compensation the learned counsel for the 3rd respondent-the insurer contended that the Tribunal went wrong in granting higher rate of compensation under different heads and in granting amount in excess of what is actually due. As noticed hereinbefore, certain factors are common to both the claim petitions from which these appeals arose. The claim petitions were filed by the parents of victims of the accident who were students of L.B.S. College of Engineering, Kasaragod and both the victims were aged 19 years at the time of the accident. Admittedly, taking into account the fact that the victims of the accident are Engineering students and they had not actually started to earn the Tribunal fixed their monthly income notionally at Rs. 12,000/- and thereafter taking into consideration of the fact that they are bachelors, presumably, in the light of the decision of the Hon'ble Apex Court in *Sarla Verma v. Delhi Transport Corporation* (2010 (2) KLT 802 (SC)), 50% of the said income was deducted towards personal expenses for fixing the multiplicand for the purpose of computing the compensation payable under the head "loss of dependency". In both the cases the Tribunal fixed the multiplier with reference to the age of the mother of the respective victims. In O.P. (M.V)No.590 of 2006 taking into account the age of the first appellant, the mother of the deceased, the multiplier was taken as "15" and in O.P.(M.V)No.24 of 2008 taking into account the age of the first appellant, the mother of the victim, the multiplier was taken as "11". While the learned counsel appearing for the 3rd respondent submits that the Tribunal has correctly adopted the multiplier in those cases the learned counsel appearing for the appellants contends that the Tribunal went wrong in adopting the multiplier with reference to the age of the mother of the deceased relying on the decision of the Hon'ble Apex Court in *Munna Lal Jain v. Vipin Kumar Sharma* ((2015) 6 SCC 347). The learned counsel for the appellants further contended that the amount of Rs. 5,000/- granted towards funeral expenses requires an enhancement in the light of the decision of the Hon'ble Apex Court in *Rajesh v. Rajbir Singh* (2013 (3) KLT 89(SC)). It is contended that in the light of the dictum laid down therein in the absence of evidence for higher compensation under that head at least an amount of Rs.

25,000/- ought to have been granted. The learned counsel appearing for the appellants further contended that the Tribunal erroneously estimated the compensation payable under various other heads such as damage to clothing, pain and suffering, loss of love and affection and loss of estate. The learned counsel for the 3rd respondent resisted such contentions and submitted that all the relevant aspects were taken into consideration by the Tribunal while awarding compensation under all such heads, but erred in granting exorbitant amount as compensation under loss of dependency. In that regard the learned counsel for the third respondent further contended that the Tribunal went wrong in taking the monthly income of the victims of the accident at Rs. 12,000/- notionally as they were students who had not started to earn anything.

4. We have considered the rival contentions, perused the awards as also the evidence on record bearing in mind such contentions. As noticed hereinbefore, the victims in these cases were students of L.B.S. College of Engineering and were aged only 19 years. Firstly, we will consider the question whether the Tribunal was correct in adopting the multiplier "15" and "11" respectively in the aforesaid cases, with reference to the age of the mother of the respective victim. We have already adverted to the rival contentions. The learned counsel for the appellants contended that in the light of the decision of the Hon''ble Apex Court in Munna Lal Jain's case (supra) rendered after referring to the decisions in Sarla Verma's case and in Rajesh's case (supra) as also in Reshma Kumari v. Madan Mohan ((2013) 9 SCC 65) there is absolutely no room for any doubt as to how the multiplier has to be adopted for deciding the compensation for loss of dependency in a claim for compensation for death filed under Section 166 of the Act and it has to be taken only with reference to the age of the deceased. Per contra, the learned counsel for the 3rd respondent contended that the Tribunal has virtually taken the multiplier correctly by looking into the age of the mother of the respective victims and to drive home the said point the learned counsel drew our attention to the decision of the Hon''ble Apex Court in U.P. State Transport Corporation v. Trilok Chandra (1996 (2) KLT 218 (SC)). The learned counsel took us through the decision in Reshma Kumari's case (supra) wherein the Hon''ble Apex Court considered the decision in Trilok Chandra's case (supra) as well, with a view to point out the position that the dictum in Trilok Chandra's case in its true perspective was not at all taken into consideration in Reshma Kumari's case (supra). The decision in Trilok Chandra's case (supra) rendered by the Hon''ble Apex Court on 7.5.1996 and it is true that, in that case the Hon''ble Apex Court fixed the multiplier with reference to the age of the parents and not with reference to the age of the deceased. It is a decision by a three Judges Bench of the Hon''ble Apex Court. The decision in Reshma Kumari's case (supra) was also rendered by a Bench of co-equal strength and undoubtedly, going by the decision in Reshma Kumari's case in respect of such a claim multiplier has to be adopted with reference to the age of the deceased. In Reshma Kumari 's case (supra), the table prepared in Sarla Varma's case (supra) regarding the selection of the multiplier was considered, more particularly in paragraph 36 thereunder,

which reads as follows:-

"36. In *Sarla Verma*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and © the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income;(ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*." (emphasis supplied)

5. A perusal of the decision in *Sarla Varma*'s case (*supra*) would reveal that it was rendered by the Honourable Apex Court after referring to the decision in *Trilok Chandra*'s case (*supra*). The learned counsel for the third respondent attempted to canvass the position that in none of the aforesaid decisions, the question whether the multiplier is to be applied with reference to the age of the parents in a case where the claim was filed by the parents under Section 166 of the M.V.Act was pointedly considered though the said aspect was considered and decided in *Trilok Chandra*'s case (*supra*). We have noticed that the decision in *Trilok Chandra*'s case (*supra*) was relied on, in *Reshma Kumari*'s case (*supra*) and referred to in *Sarla Varma*'s case (*supra*). It is thereafter that the Honourable Apex Court in *Reshma Kumari*'s case (*supra*) after taking into account the fact that in *Sarla Varma*'s case (*supra*), virtually held that the points found inevitably to be considered to arrive at the loss of dependency, including the one that the multiplier has to be applied with reference to the age of the deceased do not require revisitation as their Lordships were also in full agreement with the view in *Sarla Varma*'s case (*supra*). Decision of the Hon'ble Apex Court in *Munna Lal Jain*'s case (*supra*) would reveal that the decision in *Sarla Varma*'s case (*supra*) on the question of adoption of multiplier with reference to the age of the deceased, confirmed by the decision in *Reshma Kumari*'s case (*supra*), was followed by the Honourable Apex Court in the matter of fixing the multiplier. *Munna Lal Jain*'s case was also rendered by a three Judges Bench. The appellants cannot be heard to contend that while rendering the decisions in *Reshma Kumari*'s case and in *Munna Lal Jain*'s case, the Honourable Apex Court was not aware of its decision in *Trilok Chandra*'s case with respect to the manner in which the multiplier has to be adopted. The learned counsel for the third respondent still attempted to canvass the position that as the Apex Court had not actually considered in *Sarla Varma*'s case, in *Reshma Kumari*'s case as also in *Munna Lal Jain*'s case, the said issue with reference to the decision in *Trilok Chandra*'s case (*supra*) that it has to be decided with reference to the age of the parents the issue has to be considered in detail. We are afraid the said contention cannot be upheld. In that context, it is only

apposite to refer to the decision of the Honourable Apex Court in *Fuzlunbi v. K.Khader Vali & another* (AIR 1980 SC 1730) wherein the Hon''ble Apex Court held after referring to the reasons which may persuade a Judge to distinguish the precedents and the devices available therefor, thus:-

"we need hardly say that these devices are not permissible for the High Courts when decisions of the Supreme Court are cited before them not merely because of the jurisprudence of precedents, but because of the imperatives of Article 141."

In *Sugandhi v. Jagadeesan* (2002(1)KLT 581 (SC)), the Hon''ble Apex Court held that it is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, but also in the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India, it was further held. In *Anil Kumar Neotia and others v. Union of India and others* (AIR 1988 SC 1353), the Apex Court had considered the question whether a decision of the Supreme Court can be said to be not binding taking up a plea that certain points have not been urged before the Apex Court regarding the binding effect of an earlier decision while relying on the said decision. That question was considered in the light of the earlier decision of the Apex Court in *Smt. Somawanti & Ors. v. State of Punjab* (1963 SCC 151). The Apex Court in *Anilkumar's case* (supra) quoted the observation of the Apex Court in *Somawanti's case* (supra) with agreement thus:-

"The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that, that point with reference to which an argument was subsequently advanced was actually decided." In the light of the said decisions, and above all, in view of the mandate under Article 141 of the Constitution of India, what is to be looked into is whether the point in question was decided in *Sarla Varma's case* and *Reshma Kumari's case* and in *Munna Lal Jain's case* (supra). True that the decision in *Sarla Varma's case* was rendered by a Two Judges Bench. But then, *Reshma Kumari's case* and *Munna Lal Jain's case* were decided by a Bench of three Judges. In all those decisions, it was held that the multiplier, in such circumstances, has to be adopted with reference to the age of the deceased. At any rate, we are bound to follow the aforesaid decisions, which are later in point of time, based on the constitutional mandate under Article 141 and also in view of the jurisprudence of precedents. Thus, it is obvious that the position of law as to the fixation of the multiplier in a claim for compensation for death filed under Section 166 of the Motor Vehicles Act, i.e. whether it should be applied with reference to the age of the deceased or with reference to the age of the parents, has now been settled and going by the settled position, it has to be applied with reference to the age of the deceased. Therefore, we got no doubt that the exposition of law by the Honourable Apex Court in the aforesaid point in the later decisions is binding on this Court and therefore, the contra contention that multiplier has to be decided

not with reference to the age of the deceased, cannot be accepted. In short, in the light of the decision of the Apex Court in Sarla Verma's case (supra), which was virtually affirmed by the Apex Court in Reshma Kumari's case (supra) and followed in Munna Lal Jain's case (supra), without all peradventure it can be said that in a claim for compensation arising out of death filed under Section 166 of the Motor Vehicles Act, the multiplier has to be fixed with reference to the age of the deceased.

6. Now, the next question to be decided is whether the Tribunal has properly fixed the multiplicand in these cases. As noticed hereinbefore, the learned counsel for the third respondent/the insurer contends that the Tribunal fixed the monthly income of the victims concerned exorbitantly. However, the learned counsel appearing for the appellants contended that the Tribunal erred in fixing the multiplicand without properly applying the settled position of law on that point. Obviously, the learned counsel for the appellants raised such a contention relying on the decisions of the Hon'ble Apex Court in Rajesh's case (supra) and Mekala v. Malathi. M. and another (2014 KHC 4325). It is a fact that the question of fixation of compensation arising out of the death of a student who had not started earning, is essentially a puzzling problem, mainly for the reason that none can say with precision as to what he/she would have been, but for the untimely death. In other words, in such circumstances, a high degree of guess work has to be applied while deciding the quantum of compensation to be paid in such cases. But, at the same time, a survey of the authorities on the subject would reveal that the constant and consistent stand of the Hon'ble Apex Court, as revealed from a plethora of decisions, is that while fixing the compensation payable under the head loss of dependency, though the minor concerned had not started earning, the court/the tribunal has to fix the monthly income notionally for the aforesaid purposes. Furthermore, such fixation has to be made with reference to various aspects such as, the educational career graph, future prospects etc. In this case, the two students for whose death claim petitions have been filed by their respective parents, were studying in LBS College of Engineering at Pooval in Kasaragod. Obviously, taking into the fact that the victims were Engineering students, the Tribunal took the monthly income notionally at Rs. 12,000/- in both the cases. Despite the persuasive argument of the counsel for the third respondent, we do not find any reason to hold that the notional income fixed by the Tribunal as Rs. 12,000/- is excessive or exorbitant. No doubt, had they been alive and passed out from the Engineering College on employment, they would not have been placed on a scale of pay having a starting which is lesser than Rs. 12,000/-. At the same time, in the wake of the arguments of the appellants-claimants the question whether it was appropriately fixed after reckoning all vital aspects, for the purpose of assessing the compensation under the head loss of dependency, calls for consideration. Learned counsel for the appellants contended that while fixing the multiplicand for the aforesaid purposes, though the Tribunal deducted 50% of the monthly income, after fixing it notionally, the Tribunal had failed to take note of the future

prospects, which the deceased persons would have had and to make an addition reckoning such crucial factor. The said contention is founded on the decision of the Honourable Apex Court in Mekala's case (supra). Per contra, the learned counsel for the third respondent contended that when once the monthly income was fixed notionally, there is no scope for further enhancement taking into account the future prospects therewith as what was fixed as income notionally is nothing, but the future income which the deceased would have earned. The rival contentions have to be appreciated with reference to the decision in Mekala's case (supra). True that the claim in Mekala's case (supra) was not for compensation for death, but it was one for injuries sustained in a motor accident. The injured/claimant was a student of 11th standard when the accident occurred. In the incident, she incurred 70% permanent disability. The Tribunal took the monthly income notionally as Rs. 6000/- for the purpose of calculating the compensation payable for the permanent disablement. Taking into account the fact that she sustained 70% permanent disability, in that appeal, the High Court of Madras virtually affirmed the notional income thus taken by the Tribunal. It is to be noted neither the Tribunal nor the High Court took into consideration the future prospects while fixing the monthly income notionally. In the said circumstances, the Hon'ble Apex Court held in paragraph 19 as follows:-

"19. Therefore, in the light of the principles laid down in the aforesaid case (after referring to the decision in Reshma Kumari's case(supra)) it would be just and proper for this Court, and keeping in mind her past results, we take Rs.10,000/- as her monthly notional income for just and reasonable compensation under the head loss of income. Further the High Court failed to take into consideration the future prospects of income based on the principles laid down by this Court in the catena of cases referred to supra. Therefore, the appellant is justified in seeking for enhancement under this head as well and we hold that the claimant-appellant is entitled to 50% increase under this head as per the principle laid down by this Court in the case of Santosh Devi (supra)."

It is thus obvious that the Apex Court enhanced the monthly income and fixed it notionally at Rs. 10,000/- and thereafter gave 50% increase on the said amount towards future prospects while considering the compensation payable in a case where the claim was for compensation for permanent disability, incurred in a motor accident by a student who was yet to start earning any income. The question to be considered is whether after fixing the monthly income notionally an increase on the same is permissible reckoning the future prospects in a claim for the death of a student who was a non-earning person, for the purpose of calculating the compensation under the head "loss of dependency". We are of the considered view that the decision by the Hon'ble Apex Court in Mekala's case (supra) applies to such cases as well with equal force. As essentially the question happens to be one and the same, viz., whether in a case of death or injury of a student after fixing the monthly income notionally, a further addition is to be made taking into account the future prospects. Going by the decision in Santhosh Devi v. National Insurance Company Ltd. and Ors. ((2012) 6 SCC 421),

which was referred to in Mekala's case (supra), the addition has to be 50% of the monthly income in respect of a person below the age of 40. Obviously, in these cases, both the victims were aged only 19 years. Taking note of their age thus mentioned, the multiplier applied is 18 going by the decision of the Apex Court in Sarla Verma's case (supra). Based on our findings, in the light of the decision of the Apex Court in Mekala's case (supra), the appellants are entitled to get addition of 50% on the monthly income fixed notionally reckoning the future prospects they would have had, but for the untimely death. As noticed hereinbefore, the Tribunal fixed the monthly income of the victims as Rs. 12,000/- and the said fixation cannot be said to be too inadequate warranting an upward modification. In the said circumstances, in the light of the decision in Mekala's case (supra) on the aforesaid notionally fixed monthly income addition taking into account the future prospects and subsequent deduction towards the personal expenses in the light of the decision in Sarla Verma's case (supra), as applicable to bachelors, are to be made to fix the proper multiplicand. Such an exercise would give the multiplicand as applicable in both the cases as Rs. 9,000/-. Now, taking the multiplicand as Rs. 9,000/- and the multiplier as 18, if the compensation payable under the head "loss of dependency" is re-assessed, it would come to Rs. 19,44,000/-. In such circumstances, the appellants in M.A.C.A. No.175 of 2012 are entitled to get an amount of Rs. 8,64,000/- additionally and the appellants in M.A.C.A. No.225 of 2012 are entitled to get an amount of Rs. 11,52,000/-, additionally under the head loss of dependency after deducting the compensation granted by the Tribunal, to them, under the said head. We have already noted that the appellants in both the appeals have grievance regarding the amount granted towards funeral expenses. The learned counsel for the appellants contended that in the light of the decision in Rajesh case (supra), it ought to have been fixed as Rs. 25,000/-. But, the Tribunal granted only an amount of Rs. 5,000/- each towards funeral expenses. In the light of the decision in Rajesh case (supra) and in the absence of evidence for higher compensation than Rs. 25,000/- the appellants in both the cases are entitled to get an amount of Rs. 20,000/- in addition to the amount granted by the Tribunal towards funeral expenses. Though the learned counsel for the appellants contended that the compensation under other heads like damage to clothing, loss of love and affection are also liable to be enhanced, we do not find any reason to grant any enhancement with respect to the compensation granted by the Tribunal under such heads, as according to us, reasonable amounts have been granted under such heads. We find that as per the common award in O.P. (MV) No.590 of 2006, the Tribunal granted an amount of Rs. 25,000/- towards the loss of estate and at the same time, in O.P(M.V)No.24 of 2008, the Tribunal granted only an amount of Rs. 10,000/- under the said head. As noticed hereinbefore, in both the cases, the parents of victims of the accident filed the claim petitions and no reason whatsoever was assigned by the Tribunal for declining the same amount under that head in O.P(M.V) No.24 of 2008. Taking into account the fact that there is absolutely no change in circumstances in both the claim petitions, we are of the view that the compensation under the said

head in O.P(M.V)No.24 of 2008 is to be enhanced to bring parity. In such circumstances, we fix the amount payable under the head "loss of estate" in M.A.C.A. No.225 of 2012 arising from O.P(M.V) No.24 of 2008 as Rs. 25,000/-. Therefore, the appellants therein are entitled to get an amount of Rs. 15,000/- additionally under that head. In the said circumstances, M.A.C.A. Nos.175 and 225 of 2012 are allowed and consequently, M.A.C.A. Nos.2037 and 2050 of 2011 filed by the third respondent/insurer are dismissed. In M.A.C.A. No.175 of 2012, we award an enhanced amount of Rs. 8,84,000/- with interest at the rate of 8% from the date of petition till realisation and in M.A.C.A. No.225 of 2012, we award an enhanced amount of Rs. 11,87,000/- with interest at the rate of 8% from the date of petition till realisation. The third respondent is directed to deposit the enhanced amount of compensation in both the appeals within a period of five months from the date of receipt of a copy of this judgment. Needless to say that in case of failure to deposit the amounts within the above stipulated time, the amount remaining to be paid in each case will carry interest @ 9% per annum. There will be no order as to costs.