

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

MACA.No. 120 of 2005 ()

AGAINST THE AWARD IN OPMV 1393/2000 of M.A.C.T., MANJERI DATED
15.10.2004

APPELLANT(S)/APPELLANTS:

1. MOHAMMED, S/O KUNEEN
PARANCHERI ILLIKATHODY, POOKOTTUR POST
MALAPPURAM DISTRICT.

2. KUNHIKADIYUMMA, S/O.PARAPURATH ENI,
PARACHEERI ILLIKATHODY, POOKOTTUR POST
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS:

1. KAPPADAN SULAIMAN (DRIVER)
S/O.ALAVIBAPPU, VEEMBOOT, NARUKARA P.O.
MALAPPURAM DISTRICT.

2. RAZACK (OWNER),
S/O.KUTTIALI, MARIYAD, MANJERI
MALAPPURAM DISTRICT.

3. UNITED INDIA INSURANCE CO.LTD.,
MANJERI, MALAPPURAM DISTRICT.

R,R2 BY ADV. SRI.P.VENUGOPAL (1086/92)

R,R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P JOSEPH, JJ.**

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MACA No. 120 of 2005

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Dated, this the 27th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of compensation awarded by the Tribunal in respect of the death of a passenger in an autorikshaw bearing No. KL 10 C 2657 is the subject matter of challenge in this appeal preferred by the legal heirs of the deceased.

2. The factual position revealed from the materials on record is that the deceased by name Abdul Razack was travelling as a passenger in the autorikshaw bearing No. KL10 C 2657 on 17.05.99. While so, at about 5 pm; mini lorry bearing No. KL10 7902 owned by the second respondent and driven by the first respondent came from the opposite side and dashed against the autorikshaw causing fatal injuries, leading to death of the passenger. This led to the claim petition preferred by the parents and unmarried sister of the deceased, claiming a total compensation of Rs.5 lakhs.

3. The above matter was considered by the Tribunal along with the claim petition preferred by the driver of the autorikshaw by way of OP(MV) No.1235 of 2000 and a common Award was passed on 15.10.2004. The claimants in the instant case contended that the deceased was an able bodied youth, holding a driving licence. It was stated that, he was eking out his livelihood by various means and was having an income of about Rs.5000/- p.m. After completion of evidence, the Tribunal awarded compensation under various heads and granted a total sum of Rs.1,44,300/- which was ordered to be satisfied by the insurer with interest @ 6% p.a. from the date of petition, which is stated as totally inadequate and hence the appeal.

4. Heard the learned counsel for the appellant as well as the learned counsel appearing for the insurance company.

5. Despite completion of service of notice, the second respondent/owner has not turned up. Policy stands admitted. In the said circumstance, we dispense with notice to the first respondent, who was the driver.

6. After considering the facts and circumstances, we find that the monthly income reckoned by the Tribunal for working out the loss of dependency fixing a sum of Rs.1,36,800/- is quite

inadequate. We refix monthly income of the deceased as Rs.3500/-. The multiplier adopted by the Tribunal based on the average age of the parents is '9.5'. By virtue of the law already declared by the Apex Court on the point and also the one rendered by a '3 member Bench' in **Reshma Kumari and Others Vs. Madan Mohan and another [(2013) 9 SCC 65]**, doubting and referring the law declared by the Apex Court in **Sarala Varma's** case, it has been held that multiplier has to be adopted on the basis of the age of the 'deceased' and not on the basis of the average age of the parents.

7. In the said circumstances, we find it appropriate to reckon the multiplier of '17' in the instant case, as the deceased was of 24 years at the time of accident. On reworking the compensation as above, we find that the total compensation payable in respect of the death is Rs.3,57,000/-, treating only 50% of the income as the contribution to the family. We find that no amount has been awarded towards 'loss of love and affection'. We grant a sum of Rs.50,000/- under this head. Since the amount awarded towards the funeral expenses is quite inadequate, we grant a further sum of Rs.8000/-. A notional sum of Rs.5000/- is awarded towards 'loss of estate'. As such, the additional

MACA No. 120 of 2005

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compensation payable to the appellants/claimants comes to be Rs.2,75,700/- [(357000+50000+8000+5000) - 144300]. The said amount shall carry 9% of interest from the date of petition filed before the Tribunal, till satisfaction. Insurance Company is directed to effect the payment within one month.

Appeal stands disposed of.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE.**

Sd/-

**BABU MATHEW P. JOSEPH,
JUDGE.**

kmd