

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON  
&  
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

M.A.C.A.No. 325 of 2005 ( )  
-----

AGAINST THE AWARD IN O.P.(MV) NO. 821/2001 of M.A.C.T., MANJERI DATED 25.10.2004

APPELLANTS/PETITIONERS:  
-----

1. O.P.K. MOHAMMED HAJI,  
KALATHINGAL HOUSE, TRIPANACHI P.O.,  
KUZHIMANNA,  
MALAPPURAM DISTRICT.
2. M.C. RUKKIYA,  
W/O. O.P.K. MOHAMMED HAJI, DO. DO.

BY ADV. SRI. BABU S. NAIR

RESPONDENT(S)/RESPONDENTS:  
-----

- \*1. P. SAJITH, S/O. ALAVI,  
SAJI NIVAS, KARAKUNNU P.O., (DRIVER & OWNER)  
MALAPPURAM DISTRICT. (DELETED)
2. NATIONAL INSURANCE CO. LTD.,  
MANJERI.

\*RESPONDENT NO. 1 IS DELETED FROM PARTY ARRAY AS PER ORDER DATED  
30.09.2015 IN I.A. NO. 3445/2015 IN M.A.C.A. NO. 325/2005.

R2 BY ADV. SRI. RAJAN P. KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON  
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

**P.R. RAMACHANDRA MENON  
&  
SHAJI P. CHALY, JJ.**

-----  
**M.A.C.A. No.325 of 2005**  
-----

**Dated this the 1<sup>st</sup> day of December, 2015**

**JUDGMENT**

**P.R. Ramachandra Menon, J.**

Inadequacy of the compensation awarded by the Tribunal in respect of death of a youth aged 22 years is the subject matter of challenge of the appeal preferred by the claimants.

2. The accident occurred was on 23.12.1997. The deceased was riding a motorcycle bearing No.KL-10/B-8432 with a person on the pillion. While so, when he reached the place of occurrence, Jeep bearing No.KL-10/F-957 owned and driven by the 1<sup>st</sup> Respondent and insured with the 2<sup>nd</sup> Respondent came from the opposite side and knocked him down, causing fatal injuries leading to the death of the deceased and injuries to the pillion rider. This led to two separate Claim Petitions preferred as O.P.(MV) No.820 of 2001 and O.P.(MV) No.821 of 2001, which were tried jointly. The 1<sup>st</sup> Respondent before the Tribunal did not chose to contest the matter and remained exparte. The matter was contested only by the Insurance Company on general grounds, since no

violation of statutory or policy conditions was involved. The evidence adduced before the Tribunal consists of Exhibits A1 to A8 and no oral evidence was adduced by either side. Based on the available materials on record, the Tribunal arrived at a finding that the accident was solely because of the negligence on the part of the driver of the jeep and proceeded to fix compensation accordingly.

3. The claim of the parents before the Tribunal was that the deceased was a general worker earning a monthly income of Rs.3,000/-. The Tribunal reckoned the same only at a notional figure of Rs.15,000/- and after reducing 1/3<sup>rd</sup> towards the personal expenses, the balance amount was reckoned as contribution to the family, to work out the loss on dependency. Only paltry amounts are awarded under different heads and no amount has been awarded towards loss of love and affection as well. It is accordingly that a meagre sum of Rs.1,23,000/- has been awarded which also sought to be satisfied with interest at the rate of 6% p.a. from the date of petition till satisfaction, which is sought to be interfered by this Court by filing the appeal.

4. Heard the learned counsel for the appellants as well as the learned counsel for the Insurance Company.

5. It is true that the claimants had not examined anybody nor had produced any documents to prove the avocation or income. But it has to be noted that the contention was that the deceased was a general worker. There is no much dispute with regard to the said particulars. In such circumstances, this Court does not find anything to disbelieve the version of the claimants that the deceased was a general worker who could have earned a living with much more income than the one reckoned by the Tribunal. Considering the facts and circumstances and also the economic conditions prevailing on the date of accident, we find it appropriate to fix the same as Rs.2,500/- to work out the compensation. The amounts awarded by the Tribunal under different heads has given in paragraph 8 are as given below:

| <i><b>Sl.No.</b></i> | <i><b>Head of Claim</b></i>  | <i><b>Amount awarded by the Tribunal</b></i> |
|----------------------|------------------------------|----------------------------------------------|
| <b>1</b>             | <b>Loss on dependency</b>    | <b>Rs.1,20,000/-</b>                         |
| <b>2</b>             | <b>Transport to hospital</b> | <b>Rs.1,000/-</b>                            |
| <b>3</b>             | <b>Pain and suffering</b>    | <b>Rs.5,000/-</b>                            |
| <b>4</b>             | <b>Funeral expenses</b>      | <b>Rs.2,000/-</b>                            |

6. The total compensation is stated as Rs.1,23,000/-. Now it is seen that the multiplier adopted by the Tribunal is 12, based on the age of the parents. It is now settled law that multiplier has to be adopted on the basis of the age of the deceased, as made clear by the Apex Court on many an occasion. In the above circumstances, we find that the compensation requires to be paid adopting the appropriate multiplier of '18', the deceased being a person of 22 years. At the same time, it has to be borne in mind that since the parents alone were the claimants 50% had to be deducted and the remaining 50% alone, could be taken as the contribution to the family. On re-working at the compensation as above, the figure comes to Rs.2500x12x50/100x18. After giving credit to the amount of Rs.1,20,000/- awarded by the Tribunal, the balance is **Rs.1,50,000/-** (Rs.2,70,000 - Rs.1,20,000). It is awarded accordingly.

7. It is seen that the Tribunal has awarded only Rs.2,000/- towards funeral expenses. Considering the factual situation prevailing as on the date of accident, we find it to be enhanced by a further sum of **Rs.8,000/-**. The Tribunal has not awarded any amount towards love and affection. We are

aware of the decision rendered by the Supreme Court as reported in '**Rajesh v. Rajbir Singh**' [2013 (3) KLT 89 SC]. Loss of love and affection requires to be compensated to the extent of Rs.1,00,000/-. But the accident on the said case was in the year 2007, whereas in the instant case, it was a decade back. The above decision came to be considered by the Division Bench of this Court and necessitates to make appropriate modification, in terms of the judgment reported in '**Valsamma v. Binu Jose**' [2014 (1) KLT 10], holding that age of the deceased and that of the claimants are also relevant. Considering the facts and circumstances, we find that a sum of **Rs.50,000/-** is liable to be awarded to the parents towards the loss of love and affection. The total balance compensation payable come to **Rs.2,08,000/-**. In view of the rate of interest which is being awarded based on the decisions rendered by the Apex Court, as on date, the balance compensation requires to be satisfied with interest at the rate of 9% p.a. from the date of petition.

8. However, we find that the appeal was filed with a petition to condone the delay in filing the same, which was sought to be condoned by filing C.M.Appln. No.390 of 2005,

wherein notice was ordered on 28.03.2005. But, no process charges were remitted by the appellants till 19.08.2009. Defect was not cured by the appellants till August, 2009 and it was only thereafter notice was served to the 2<sup>nd</sup> Respondent Insurance Company. Notice in respect of the 1<sup>st</sup> Respondent was not served and for consideration, it came up before the Bench on 22.02.2013. Referring to the lapses on the part of the appellants, further time was granted by two weeks, subject to payment of cost of Rs.500/- to the Kerala State Mediation and Conciliation Centre, simultaneously observing that in case of any failure, the appeal would stand dismissed for non-prosecution. The matter was remaining as it was and I.A.Nos.3445 and 3446 of 2015 were filed, wherein an order was passed by this Court on 30.09.2015 in the following terms:

*"Despite granting several opportunities, no steps were taken on time to complete service of notice to the first respondent. As per order dated 22.02.2013, two weeks time was granted in this regard, subject to payment of Rs.500/- as cost to the Kerala State Mediation and Conciliation Centre. It is stated that cost has been paid on 07.03.2013. But no process charges were remitted to complete service. It was accordingly that the matter was listed on 25.09.2015*

*and subsequently today as well. It is brought to the notice of this Court that policy has been admitted. The second respondent has entered appearance. In the said circumstances, we modify the earlier order dated 22.02.2013 and the first respondent is deleted from the party array, as he is not a necessary party. Both the I.As. are allowed to the said extent. It is made clear that, if the appellants get any enhancement, they will be entitled to get interest only from today."*

9. It was accordingly the 1<sup>st</sup> Respondent was deleted from the party array and the delay in filing the appeal was condoned as per the order dated 25.11.2015. In the above circumstances, we make it clear that the enhanced compensation of Rs.2,08,000/- will carry interest at the rate of 9% p.a. from 30.09.2015. Since the policy is admitted, the Insurance Company is directed to satisfy the amount 'within one month' from the date of receipt of a copy of this judgment.

Sd/-

**P.R. RAMACHANDRA MENON  
JUDGE**

Sd/-

**SHAJI P. CHALY  
JUDGE**

//true copy//

P.S. to Judge

St/-

01.12.2015