

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

TUESDAY, THE 1ST DAY OF SEPTEMBER 2015/10TH BHADRA, 1937

MACA.No. 111 of 2012 ()

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AGAINST THE AWARD IN OP(MV) 2771/2005 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,KOZHIKODE DATED 21-03-2011**

APPELLANTS/PETITIONERS:

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- 1. MINI HARIKUMAR, AGED 39 YEARS
W/O.LATE HARIKUMAR**
 - 2. AHALYA HARIKUMAR, AGED 7 YEARS
D/O.LATE HARIKUMAR**
 - 3. ADITHYA, AGED 10 YEARS
D/O.LATE HARIKUMAR**
 - 4. A.K.KUMARAN NAIR, AGED 75 YEARS
F/O. LATE HARIKUMAR**
 - 5. K.DHAKSHAYANI AMMA, AGED 66 YEARS
M/O.LATE HARIKUMAR**

**APPELLANTS 2 AND 3 ARE MINORS AND ARE REPRESENTED BY THEIR
MOTHER THE FIRST APPELLANT**

**ALL THE APPELLANTS ARE RESIDING AT EDAKKOTH HOUSE
KANNIPARAMBA POST, MAVOOR, KOZHIKODE.**

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS/RESPONDENTS:

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- 1. THE MANAGING PARTNER
BON MOTO CRAFTS, MYLAKKADU POST, KOTTIYAM
KOLLAM.**
 - 2. THE ORIENTAL INSURANCE COMPNAY LIMITED
DIVISIONAL OFFICE-II, ST.ANTONY VILLA, ULLOOR
TRIVANDRUM.**

**R2 BY ADV. SRI.M.JACOB MURICKAN
R BY SRI.GEORGE CHERIAN (SR.)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.111 of 2012

Dated this the 1st day of September, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred by the claimants in O.P.(M.V.) No.2771/2005 on the file of the Motor Accidents Claims Tribunal, Kozhikode challenging the finding of the Tribunal on the negligence aspect as well as on the quantum of compensation awarded.

2. The relevant facts are as follows:

Deceased Harikumar was driving a van bearing registration No.KL-11-E-4273 from Palakkad to Vadakkanchery. When the vehicle reached near a place called Vadakkumuri, a Swaraj Mazda vehicle bearing registration No.KL-2-M-3600 collided with the said van and in that accident the deceased Harikumar sustained fatal injuries. The accident occurred on 23.8.2005 at 3.15 p.m. He was taken to Paalana Institute of Medical Sciences, Palakkad and while undergoing treatment, he succumbed to

the injuries on 24.8.2005. The appellants who are wife, children and parents of the deceased filed a claim petition before the Tribunal claiming a total compensation of Rs.6 lakhs. The Tribunal after considering the materials and evidence before it came to a conclusion that the accident occurred due to 25% negligence of the deceased and 75% negligence of the driver of the Swaraj Mazda vehicle and awarded a total compensation of Rs.3,84,937/- to the appellants. Aggrieved by the finding upon the negligence aspect as well as on the quantum of compensation awarded this appeal preferred.

3. When the appeal came up for hearing, the counsel for the appellants vehemently argued before us that in this case even though originally the police registered a crime against the deceased Harikumar as well as against the driver of the Swaraj Mazda van police filed a report before the Magistrate court indicating that they have found during investigation that the deceased Harikumar is not committed any offence. Ext.A4 is a report to that effect. It was not

properly appreciated by the Tribunal. It is also the submission that when police filed charge against the driver of the Swaraj Mazda van the Tribunal should have found that the accident occurred solely due to the negligence of the driver of the said van. It is also brought to our notice a decision of this Court, **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]** while it is hold that when a police charge is therein, prima facie it can be concluded that the negligence is on the driver against whom the police charge filed.

4. It is the submission that the deceased was a driver by profession. It is also the submission that the Tribunal took only Rs.3,500/- as his monthly income. The accident occurred in the year 2005. It is the submission that during that period a driver can easily earn above Rs.4,500/-. It is also the submission that he was employed with M/s. Kilban Foods (India) Private Limited, Kozhikode, the manufacturer of the famous brand 'Happy Jam' and a certificate issued by the Managing Director of the said firm

is produced along with I.A.No.109/2012 as document No.1. It is also the submission that to substantiate his claim that he was a driver by profession, the pension proceedings issued by the Assistant Provident Fund Commissioner, Kozhikode is also produced as document No.2 along with the above I.A. It is the further submission that as per the salary certificate, it can be seen that deductions are made to P.F., which corroborates the first document. As per the said document his wages is Rs.4,615/-. After considering the submissions, the salary certificate of the deceased produced by the appellants is marked as Ext.A9 before this court. While marking the same the copy of the pension payment order issued by the P.F. Authorities is also taken into consideration. It is the further submission that the amounts awarded towards loss of love and affection, loss of consortium, loss of dependency and loss of estate are also on a lower side and interference by this court is warranted.

5. We heard the learned counsel for the Insurance Company, who submitted before us that even though Ext.A4

document is produced, it can be seen that by that time Harikumar died. It is the further submission made before us that the document produced as Ext.A6 will show that negligence is on the side of the deceased. It is a statement given by the cleaner of the vehicle to the police. At this juncture, the counsel for the appellants submitted before us that it is an unsigned statement under Section 161 of Cr.P.C. which was not proved before the Tribunal. There is force in the submission of the counsel for the appellants. It is also the submission of the learned counsel for the Insurance Company that when no reliable evidence is produced before the court an interference regarding the income adopted by the Tribunal is not warranted. It is the further submission that considering the materials before the Tribunal, the Tribunal found that there is contributory negligence on the side of the deceased. The vehicles involved are one Swaraj Mazda vehicle as well as a van. Considering all these aspects it is found that there is contributory negligence. An interference by this Court is not

warranted.

6. When the police charge is against the driver of Swaraj Mazda van and police reported the court that the deceased not committed any offence as evident from Ext.A4, the burden is upon the respondents to show that there is contributory negligence. When there is no reliable evidence, it can be only concluded that the accident occurred due to the negligence of the driver of the Swaraj Mazda vehicle. The accident occurred in the year 2005. Ext.A8 is the driving licence of the deceased produced by the appellants. After taking into consideration Ext.A9 as well as the year of accident and also keeping in mind that Ext.A9 is not proved properly before this court we are only inclined to take the income at Rs.4,600/- for calculation purposes even though the appellants got a case that allowances are also has to be taken into consideration. Apart from the same the compensation on the head of loss of consortium, loss of love and affection, funeral expenses, loss of estate are seen to be on a lower side and a

re-fixation is warranted. Therefore the just compensation is re-fixed as follows:

Head of claim	Amount re-fixed by this court in Rs.
Transport to hospital	2000
Funeral expenses	25000
Pain and suffering	10000
Loss of dependency	4600x12x15x3/4 621000
Loss of consortium	100000
Loss of love and affection	100000
Loss of estate	35000
Total	893000

7. Thus the appellants are entitled for a total compensation of Rs.8,93,000/- (Rupees eight lakhs ninety three thousand only). Since the accident occurred solely due to the negligence of the driver of the Swaraj Mazda vehicle the insurer of the said vehicle is liable to pay the whole amount. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

8. The enhanced compensation shall be shared as follows:

The first appellant, who is the wife of the deceased shall be entitled to 50% of the enhanced compensation with interest, 10% of the enhanced compensation with interest shall be entitled to the 5th appellant, who is the mother of the deceased. The balance enhanced compensation with interest shall be shared equally in between the appellants 2 & 3, who are the children of the deceased and since they are minors the said compensation with interest shall be deposited in their name till they attain majority. It is made clear that if the release of interest on the said deposit is necessary, the appellants are entitled to move before the Tribunal for the said purpose. The compensation amount awarded to appellant No.1 & 5 shall be released on deposit.

9. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months.

10. Since the claim is only at Rs.6 lakhs, the appellants will have to pay court fee for the amount

awarded by this Court over and above the claim which will be recovered by the Tribunal once the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

**T.R. RAMACHANDRAN NAIR
JUDGE**

Sd/-

**K.P. JYOTHINDRANATH
JUDGE**

//True copy//

P.A. TO JUDGE

shg/