

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA**

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

MACA.No. 1298 of 2006 ()

**AGAINST THE AWARD IN OPMV 3203/1997 of M.A.C.T.,ERNAKULAM DATED 29-03-2005
APPELLANT(S)/APPELLANTS/PETITIONERS IN OP(MV)::**

- 1. AISHA
W/O. LATE HAMSA, KANAVATH HOUSE
NEAR PANAMPILLY COLLEGE, PETTA, CHALAKKUDY.**
- 2. BEEVI KUNJU, AGED 28,
S/O. LATE HAMSA -DO- -DO-.**
- 3. ABDUL KADER, AGED 27 YEARS,
S/O. LATE HAMSA, -DO- -DO-.**
- 4. SHAMEER, AGED 23 YEARS,
S/O. LATE HAMSA -DO- -DO-.**

BY ADV. SRI.VIVEK VARGHESE P.J.

RESPONDENT(S)/RESPONDENTS IN OP(MV)::

- 1. K.S.LAILA
VALIPARAMBIL HOUSE, VALAPPAD, THRISSUR.**
- 2. K.R. SUNDEVAN,
KOTTALA HOUSE, THANIAM VILLAGE
THRISSUR TALUK (DELECTED).**
- 3. THE UNITED INSURANCE CO. LTD.,COCHIN-16.**

**R,R3 BY ADV. SRI.S.ARUN RAJ
R3 BY SRI. JOHN JOSEPH VETTIKAD B/O**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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**P.R.RAMACHANDRA MENON
&
ANIL K.NARENDRA, JJ.**

M.A.C.A.No. 1298 of 2006

Dated this the 6th day of November, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

The loss of death of the son of the 1st appellant and the brother of the other appellants, in a road traffic accident, compensated in an inadequate manner, awarding a meagre sum of Rs.1,61,000/- with interest at the rate of 9% per annum is sought to be enhanced by filing this appeal.

2. The accident occurred was on 30.09.1997. The deceased aged 25 years, a bachelor, was walking along the road, when he was knocked down by a mini lorry bearing No.KL-8/C-9165 owned, driven and insured by respondents 1 to 3 respectively. This was sought to be compensated by filing the claim petition before the Tribunal by the mother and siblings.

3. The first respondent, owner, did not file any vakkalath; whereas the second respondent was subsequently deleted from the party array as observed by

the Tribunal. The matter was contested only by the Insurance Company on general grounds. The evidence adduced before the Tribunal consists of the oral testimony of the first appellant examined as PW1 and the documents produced as A1 to A8. Based on the said evidence, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the lorry.

4. With regard to the quantum of compensation, the Tribunal observed that no evidence was adduced to substantiate the occupation or income; under which circumstance a notional figure of Rs.1,500/- was taken as monthly income. Though the multiplier of 17 was reckoned, based on the age of the deceased, only a sum of Rs.1,000/- per month was taken as contribution to the family for the initial period of 5 years; whereas for the remaining period of 12 years, the contribution was fixed as Rs.500/-. The loss of dependency worked out as above granting a sum of Rs. 60000/- & Rs.72,000/- respectively comes to a total of Rs.1,32,000/-. The amounts awarded

by the Tribunal under the relevant heads are in the following terms.

Loss of Dependency	:	Rs.1,32,000/-
Transportation	:	Rs.1,000/-
Carriage of dead body	:	Rs.2,000/-
Funeral Expenses	:	Rs.3,000/-
Pain and Suffering	:	Rs.10,000/-
Medical & Misc.Expenses	:	Rs.3,000/-
Loss of love and affection	:	<u>Rs.10,000/-</u>
TOTAL		Rs.1,61,000/- =====

5. It is true that no positive evidence was adduced with regard to the income. But the deceased was an able bodied youth of 25 years. The accident was in the year 1997. Notional income of Rs.15,000/- was stipulated in statute; particularly under the second schedule with effect from 14.11.1994. Striking a balance, considering the totality of facts and circumstances, this Court finds it fit and proper to have it reckoned as Rs. 2,000/- per month. Since the mother alone could be regarded as the dependent, the other claimants/appellants being the

siblings, 50% ought to have been considered as the personal expenses and only the remaining 50% could have been reckoned as the contribution to the family. But there is no point in having the multiplier segregated and hence the multiplier of 17 could be applied to work out the loss of dependency. On re-working the compensation as above, it comes to $\text{Rs.}1,000 \times 12 \times 17 = \text{Rs. } 2,04,000/-$. After giving credit to sum of $\text{Rs.}1,32,000/-$ already awarded by the Tribunal, the balance comes to **Rs.72,000/-**. The Tribunal has awarded only a sum of $\text{Rs.}3,000/-$ towards funeral expenses. We find it appropriate to grant a further sum of **Rs.2,000/-** under this head. Similarly, loss of love and affection also stands inadequately compensated and we find it necessary to have it enhanced by a further sum of **Rs.40,000/-**. Thus, the balance compensation payable under all relevant heads comes to **Rs.1,14,000/-** which requires to be satisfied with interest at the rate of 9% per annum from the date of petition till satisfaction. Since the policy is admitted, we direct the Insurance Company

to effect the deposit within 'one month' from the date of receipt of copy of this judgment.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Sd/-
ANIL K. NARENDRA
JUDGE

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PA TO JUDGE

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