

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 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

MACA.No.1360 of 2005 (C)

AGAINST THE AWARD IN OPMV 2296/1999 of M.A.C.T., KOTTAYAM
DATED 30-06-2003

APPELLANTS/PETITIONERS:

1. USHA.P.R., W/O.LATE PAVITHRAN,
NIKARATHIL HOUSE, KOVILAKATHUM KADAVU BHAGOM
VAIKOM P.O.
2. ANUSREE N.P. (MINOR), REP. BY
HER MOTHER USHA P.R., W/O.LATE PAVITHRAN
NIKARATHIL HOUSE, KOVILAKATHUM KADAVU BHAGOM
VAIKOM P.O.
3. ANILKUMAR.N.P. (MINOR),
REP. BY HER MOTHER USHA P.R., W/O.LATE PAVITHRAN
NIKARATHIL HOUSE, KOVILAKATHUM KADAVU BHAGOM
VAIKOM .P.O.
4. MANKA, AGED 70 YEARS, W/O.KRISHNAN,
NIKARATHIL HOUSE, KOVILAKATHUM KADAVU BHAGOM
VAIKOM P.O.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS/RESPONDENTS:

1. R.SREEKUMAR, EDATHU HOUSE,
KALLARA P.O.
2. THE NATIONAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, CSI SQUARE BUILDING, BAKER JUNCTION
KOTTAYAM.
3. GOPAKUMAR, S/O.DAMODHARAN,
PERUMKALEL HOUSE, PUTHENPPALLY, KALLARA P.O.
KADUTHURUTHY.

R2 BY ADV. SMT.SARAH SALVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M. A. C. A. No.1360 of 2005

Dated this the 20th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Inadequacy of the amount of compensation awarded by the Tribunal on the death of a pedestrian is the subject matter of challenge in this appeal.

2. Heard the learned counsel appearing for the appellants as well as the learned Standing Counsel appearing for the Insurance Company.

3. Going by the pleadings and proceedings, no case is established on the part of the insurer as to the absence of driving licence. In so far as coverage is admitted, we dispense with service of notice to the first and second respondents.

4. The accident occurred on 23/10/1999 when a bus

bearing registration No.KL-7C/2739 driven by the third respondent and owned by the first respondent hit against the husband of the first appellant by about 11.30 a.m. while he was standing on the side of the road. Though he was immediately taken to the hospital, the life could not be saved and he succumbed to the injuries. This led to the claim petition preferred by the legal heirs of the deceased. The first and third respondents chose to remain ex parte. Written statement was filed by the insurer contending that there was no valid driving licence for the driver; which however was not substantiated by adducing any evidence. The dispute was more with regard to the quantum as discussed by the Tribunal who awarded amounts under various heads coming to a total of ₹2,34,500/- which was ordered to be satisfied by the insurance company with interest at the rate of 9% per annum.

5. During the course of hearing, learned counsel

appearing for the appellants submits that the deceased was working as a 'fisherman' and was having membership in the concerned welfare fund. It is stated that he was also having some avocation connected with tyre retreading. The Tribunal reckoned only a sum of ₹1,700/- per mensem as the notional income and worked out the dependency granting a sum of ₹2,04,000/-. The amounts awarded by the Tribunal under various heads are as follows:

Heads of compensation	(in ₹)
Loss of dependency	2,04,000
Pain and suffering	5,000
Loss of consortium, love and affection	20,000
Funeral expenses	2,000
Transportation	1,000
Treatment expenses	2,500
Total	2,34,500

6. After hearing both the sides, this Court finds that the quantum of compensation awarded by the Tribunal is quite inadequate in so far as the monthly income of the deceased

has been reckoned at a much lower level, ignoring the fact that the deceased was a person maintaining his family consisting of his wife, two minor children and also the aged mother. Considering the nature of the pleadings raised and the available materials, we find that the monthly income of the deceased has to be taken at the rate of ₹2,500/-. Going by the principle of law enunciated by the Apex Court and also taking note of the number of members in the family, we find that deduction of $\frac{1}{4}^{\text{th}}$ for the personal expenses is enough, in the place of $\frac{1}{3}^{\text{rd}}$ ordered by the Tribunal. We recompute the compensation as given above and award a sum of ₹3,37,500/- ($2500 \times 12 \times 15 \times \frac{3}{4}$) towards loss of dependency. Thus, the appellants are entitled to get a balance sum of ₹1,33,500/- under this head, after giving credit to the sum of ₹2,04,000/- awarded by the Tribunal.

7. We find that the amount of ₹5,000/- awarded by the Tribunal towards pain and suffering is very low and we

enhance the same to ₹7,500/-. Thus the appellants are entitled to get an additional sum of ₹2,500/- towards this count. We see that only a sum of ₹20,000/- has been awarded by the Tribunal towards loss of consortium and love and affection. We refix the amount and award a sum of ₹30,000/- as loss of consortium payable to the first appellant and towards loss of affection, we award a sum of ₹30,000/- in respect of the three members of the family. Thus, towards loss of consortium and loss of affection, the appellants are entitled to get an additional sum of ₹40,000/-. We award an additional sum of ₹3,000/- towards funeral expenses. Towards transportation and treatment expenses, we find that the amount awarded by the Tribunal is meagre. Hence, we award an additional sum of ₹5,000/- towards these heads together.

8. Thus the appellants are entitled to get a compensation of ₹1,84,000/- over and above the amount

already awarded by the Tribunal. The enhanced amount of compensation shall carry interest at 9% per annum from the date of application till realisation. The insurance company is directed to satisfy the amount with interest within one month from the date of receipt of a copy of this judgment.

This appeal is allowed in part. No costs.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

