

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

MACA.No. 1544 of 2005

AGAINST THE AWARD IN OPMV 422/2000 of MACT, PALA DATED
13-05-2004.

APPELLANTS/CLAIMANTS:

1. ANNAKUTTY MATHEW,
CHANDANAKKUZHIYIL HOUSE, EDANAD P.O., PALA.

2. BINOY MATHEW,
CHANDANAKKUZHIYIL HOUSE, EDANAD P.O., PALA.

3. STEPHEN MATHEW,
CHANDANAKKUZHIYIL HOUSE, EDANAD P.O., PALA.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS/RESPONDENTS:

1. S.KANNAN,
6, PERUMAL KOIL ST., PUDUPATTY, RASIPURAM,
TAMIL NADU.

* 2. K. MAHALINGAM,
SIVANATH ROAD, RASIPURAM, NAMMAKKAL (DT.),
TAMIL NADU. (DELETED)

3. THE NEW INDIA ASSURANCE COMPANY LTD.,
NAMMAKKAL, TAMIL NADU.

RERSPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY AT
THE RISK OF THE APPELLANTS AS PER ORDER DATED
10/12/13 IN I.A.NO.3290/13 IN MACA NO.1544/05.

R3 BY ADV. ADV.A.A ZIYAD REHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 22-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No.1544 of 2005

Dated this the 22nd day of September, 2015

JUDGMENT

Ramachandra Menon, J.

The inadequacy of compensation awarded by the Motor Accidents Claims Tribunal, Pala, in O.P.(MV) No.422/2000 in respect of the death of the deceased, who was the sister of the appellants herein, is the subject of matter of challenge in this appeal.

2. The deceased was stated to be walking along the road on 12/2/2000 and by about 1.30 p.m. the lorry bearing Registration No.TDM 6329 knocked her down resulting in fatal injuries. Though she was immediately taken to the hospital, the life could not be saved and she bid farewell to this world which led to the claim

petition preferred by the siblings as the legal representatives.

3. The respondents 1 and 2, who are the driver and owner of the lorry, did not choose to contest the matter and they were set ex parte. The claim was sought to be resisted by the 3rd respondent/Insurance Company on general grounds, particularly, with regard to the age, occupation, income and such other aspects. The evidence adduced before the Tribunal consists only of Exts.A1 to A7 and A8 series and the deposition made by the 3rd appellant herein, who was examined as P.W.1. On the conclusion of the trial, the Tribunal fixed negligence on the driver of the lorry and the liability was fixed accordingly. Considering the claim and the available materials on record, amounts were awarded under different heads and the total compensation payable was fixed as ₹2,79,400/- which was directed to be satisfied with interest at the rate of 9% per annum from 11/7/2000 till realisation. This is sought to be enhanced by filing this appeal.

4. Heard the learned counsel for the appellant and also Sri. A.A. Ziyad Rehman, who entered appearance for and on behalf of the 3rd respondent/Insurance Company.

5. The claim of the appellants is that the deceased was a widow who was looking after the entire family and was earning ₹100/- per day. Admittedly, no evidence was adduced with regard to the income, avocation or the dependency in any manner; more so, when the claimants were only the siblings of the deceased. The amounts awarded by the Tribunal under different heads are the following:

1. Loss of dependency	-	₹2,30,400.00
2. Transportation to hospital	-	1,000.00
3. Funeral expenses	-	5,000.00
4. Damage to clothing	-	3,000.00
5. Flight charges	-	20,000.00
6. Pain and suffering	-	10,000.00
7. Loss of love and affection	-	10,000.00

Total	-	₹2,79,400.00
		=====

6. The 1st and 2nd appellants put up a claim with

reference to Ext.A8 series flight tickets to show that they had to spent nearly ₹10,025/- each, as flight charges, to attend the funeral as they were pursuing studies in Delhi. The Tribunal awarded a sum of ₹20,000/- in this regard, besides awarding a sum of ₹1,000/- towards transportation to the hospital in connection with the accident. The monthly income of the deceased was fixed on a notional basis as ₹1,800/- and after deducting 1/3rd towards the personal expenses, the balance was reckoned for the purpose of loss of dependency fixed as ₹2,30,400/-. The pleadings and evidence adduced before the Tribunal, according to us, are not adequate enough to sustain the prayer for enhancement of loss of dependency, particularly, when the deceased was a widow and the appellants herein are the siblings who alone are stated as the sole surviving legal representatives. The alleged avocation of the deceased could not have been the basis for the income or the expenses which were being incurred/met by the appellants 1 and 2 for pursuing

their studies in Delhi and the actual facts have not been brought on record. However, since no challenge is raised from the part of the 3rd respondent/Insurance Company in this regard, we do not think it necessary to go into these aspects and the question shall remain only with regard to the adequacy of the compensation awarded by the Tribunal under different heads. Considering the fact that the accident occurred was on 12/2/2000, we find it fit and proper to reckon the notional income with a slight variation, fixing it as ₹2,000/- and the total compensation is awarded accordingly. Even though only 1/3rd had been reduced towards the personal expenses, we do not propose to have any modification in this regard as well and the figures are worked out accordingly ($2000 \times \frac{2}{3} \times 12 \times 16$), which comes to ₹2,56,000/-. After giving credit to the sum of ₹2,30,400/- awarded by the Tribunal, the balance comes to ₹25,600/-. The only other head which could be said as inadequate, if any, is the compensation awarded towards the loss of love and

affection. We find it fit and proper to have it enhanced to ₹25,600/- resulting in a balance of ₹15,000/-. The total balance compensation payable comes to ₹40,600/- which is awarded with interest at the rate of 9% per annum from the date of filing the claim petition before the Tribunal. Since the policy is admitted, the 3rd respondent/Insurance Company is directed to satisfy the said liability with interest at the rate of 9% per annum within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge