

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR  
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

MACA.No. 1118 of 2012 ()  
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AGAINST THE AWARD IN OPMV 1456/2006 of MACT,TRIVANDRUM DATED 09-05-2012

APPELLANTS/PETITIONER:  
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1. P.USHA  
W/O.DECEASED P.RAMACHANDRAN NAIR, TC.6/2021(1)  
KUNNATHU MELE PUTHEN VEEDU, KARUMANKULAM  
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM.
2. R.RAKESH CHANDRAN  
S/O.DECEASED P.RAMACHANDRAN NAIR, T.C.6/2021(1)  
KUNNATHU MELE PUTHEN VEEDU, KARUMANKULAM  
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM.
3. K.PARUKUTTY AMMA  
M/O.DECEASED P.RAMACHANDRAN NAIR, T.C.6/2021(1)  
KUNNATHU MELE PUTHEN VEEDU, KARUMANKULAM  
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.AJITH KRISHNAN

RESPONDENTS/RESPONDENTS:  
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1. N.RAMAKRISHNAN NAIR  
S/O.U.NARAYANA NAIR, PRIYA NIVAS, 14/601  
OOKKODE, OOKKODE P.O., THIRUVANANTHAPURAM.
2. THE ORIENTAL INSURANCE CO.LTD.  
DIVISIONAL OFFICE, THIRUVANANTHAPURAM  
REPRESENTED BY ITS DIVISIONAL MANAGER.
3. K.P.SIVADASAN  
S/O.PADMANABHAN, VINOD BHAVAN, KILLIKOLLOOR  
KOLLAM.
4. THE NEW INDIA ASSURANCE CO.LTD.  
DIVISIONAL OFFICE, THIRUVANANTHAPURAM  
REPRESENTED BY ITS DIVISINAL MANAGER.

5. S.SALIM,  
S/O.SHAHUL HAMEED, BISMI FRESH HALAL CHICKEN  
THOPPUMUKKU, VATTIYOORKAVU P.O., THIRUVANANTHAPURAM.

R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)  
R4 BY ADV. SRI.KKM.SHERIF  
R4 BY ADV. SRI.LAL K.JOSEPH  
R4 BY ADV. SRI.A.A.ZIYAD RAHMAN  
R1 BY ADV. SRI.K.T.SHYAMKUMAR  
R5 BY ADV. SRI.G.SUDHEER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY  
HEARD ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**T.R.RAMACHANDRAN NAIR &  
P.V.ASHA, JJ.**

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**M.A.C.A.No.1118 OF 2012**  
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Dated this the 19<sup>th</sup> day of February, 2015

**JUDGMENT**

Ramachandran Nair, J.

The claimants are the appellants herein and amount of compensation claimed is consequent on the death of late Sri.P.Ramachandran, who was an autorickshaw driver. The death occurred after he was involved in an accident which took place on 23/02/2006 at about 8.30 p.m. He was travelling in a Mahindra jeep bearing Reg.No. KBT-5237 through Thiruvananthapuram-Kollam National Highway towards Kollam. When it reached near Chathannoor, it hit against a motor cycle bearing Reg.No.KL-2-U-7004, which was coming from the opposite direction. The jeep further proceeded and hit against a goods autorickshaw bearing Reg.No.KL-02-T-6757 which was coming from the opposite direction. The jeep capsized and the deceased was thrown out of the jeep and sustained very serious injuries. He died on 25.2.2006 while undergoing

treatment in the Medical College Hospital, Thiruvananthapuram.

2. The registered owner of the vehicle, the first respondent is found liable to meet the liability as the policy was only a 'Liability Only Policy'. A total compensation of ₹4,12,500/- has been granted by the Tribunal.

3. The learned counsel for the appellant raised two contentions. One is regarding the quantum and the other relating to the coverage under the policy. The Insurance Company has filed an affidavit producing Annexure 1, copy of the policy. It is a 'Liability Only Policy'. Going by the same, for basic liability, ₹ 700/- has been paid as premium. The premium paid under other heads namely PA ( Personal Accident) is ₹100/- . The legal liability of driver is ₹25 and for any extra loading it is ₹210/-.

4. The argument built up by the learned counsel for the appellants is that the amount representing extra loading is for coverage in a case like the one herein. The learned Senior counsel for the Insurance Company explained that the same is not premium amount obviously. The amount representing extra loading is fixed and

collected by the Insurance Company in the light of the fact that the owner might have availed claims during the previous year.

5. On a perusal of the policy, we find no reason to disagree with the contention raised by the Insurance Company. Therefore the policy being a liability only policy, the company will not be liable.

6. As far as the quantum of compensation is concerned, the Tribunal has granted compensation going by the table given below under different heads :

| <i>Head of claim</i>                                                                                                 | <i>Amount Awarded in rupees</i> |
|----------------------------------------------------------------------------------------------------------------------|---------------------------------|
| Transportation to hospital                                                                                           | 3000                            |
| Funeral expenses                                                                                                     | 5000                            |
| Damage to clothing and other articles                                                                                | 500                             |
| Pain and suffering                                                                                                   | 10000                           |
| Compensation for premature death, loss of consortium of wife, loss of love and affection to dependent son and mother | 30000                           |
| Loss of dependency                                                                                                   | 364000                          |
| Total                                                                                                                | 412500                          |

7. The deceased was treated for three days after which he died. The Tribunal has granted ₹10,000/- towards compensation for pain and suffering, which is justified. But as far as funeral expenses is concerned, ₹5,000/- alone has been granted which we enhance to ₹25,000/-. For loss of consortium of wife and loss of love and affection of the dependent son and the mother of the deceased, we grant @ ₹100,000/- in the light of the judgment in **Rajesh v.Rajbir Singh ( 2013 (3) KLT 89 (SC)**. For loss of estate, nothing has been granted by the Tribunal. We grant an amount of ₹50,000/- under the said head.

8. The deceased was aged 48 at the time of the accident and the multiplier fixed is 13. The driving licence of the deceased has been produced as Ext.A7. Even though documentary evidence is not there with regard to the monthly income, in the light of the fact that he was a skilled driver, it will be only reasonable to fix ₹6,000/- as the monthly income since the accident is of the year 2006 and we also rely upon the judgment of the Apex Court in **Minu Rout and another v. Satya**

**Pradyumna Mohapatra and others ( 2013 (10)SCC 695)**, where the Apex Court has adopted ₹6,000/- as the monthly income of the driver in an accident which occurred in the year 2005. It was held that the Tribunal and the Courts should take judicial notice of the fact that the driver is having a skilled job. Therefore, the compensation towards loss of dependency is recomputed as ₹6,24,000/- ( 6000 x 12 x 13 x 2/3).

9. Accordingly the total compensation will be as follows :

| <i>Head of claim</i>                  | <i>Amount Awarded in rupees</i>                          |
|---------------------------------------|----------------------------------------------------------|
| Transportation to hospital            | 3000                                                     |
| Funeral expenses                      | 25000                                                    |
| Damage to clothing and other articles | 500                                                      |
| Pain and suffering                    | 10000                                                    |
| Loss of love and affection            | 100000                                                   |
| Loss of consortium                    | 100000                                                   |
| Loss of estate                        | 50000                                                    |
| Loss of dependency                    | 624000                                                   |
| Total                                 | 912500<br>(Nine lakhs twelve thousand five hundred only) |

10. As regards the liability of the first respondent, we have heard the learned counsel for the first respondent and the learned counsel for the fifth respondent. It is submitted by the learned counsel for the above respondents that the vehicle was actually transferred by the first respondent to the fifth respondent who in turn transferred it to the sixth respondent before the Tribunal. But during the pendency of the matter before the Tribunal, he died. He was impleaded in the light of the contention raised by the first respondent. It is submitted that his legal heirs were not impleaded before the Tribunal. According to the learned counsel for the first respondent as the vehicle has already been transferred and possession was also with the sixth respondent, no liability can be fastened on the first respondent. The same is the argument raised by the learned counsel for the fifth respondent also.

11. The learned counsel therefore seeks for a remand of the matter to consider the same. As far as the appellants are concerned, for recovering the amount, the liability of the person who was having ownership and possession of the vehicle has to be fixed. The first respondent was found liable since he was the registered owner.

Therefore for the limited purpose, we remand the matter for consideration by the Tribunal and as regards the total compensation allowed, the same will be at the rate as we now fixed. The enhanced compensation will carry interest @ 9% per annum. Appropriate decision will be taken by the Tribunal as regards the person who is liable to satisfy the award. All the parties are given opportunity to adduce evidence. It is open to the appellants to implead the legal heirs of deceased sixth respondent before the Tribunal.

The appeal is accordingly disposed of. The parties shall bear their costs in the appeal.

**T.R.RAMACHANDRAN NAIR, JUDGE**

**P.V.ASHA, JUDGE**

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