

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

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

MACA.No. 1794 of 2005 ()

**AGAINST THE AWARD IN OPMV 99/2002 of D.C. & SESIONS & MACT,KALPETTA DATED
17-09-2002**

APPELLANT(S)/APPELLANTS:

- 1. PADMINI.S.K., W/O.LATE ANANDAN,
32 YEARS, NUCHUVALAPPIL HOUSE, C/O.HILL PALACE
CHOOTTAKKADAVU, MANANTHAVADY.**
- 2. ANOOP, S/O.LATE ANANDAN, AGED 14 YEARS,
RESIDING -DO-**
- 3. AJITH, AGED 12, S/O.LATE ANANDAN,
RESIDING -DO-
(PETITIONERS 2 AND 3 BEING MINORS REP. BY MOTHER
AND GUARDIAN PADMINI, THE IST APPELLANT).**

BY ADV. SRI.N.J.ANTONY

RESPONDENT(S):

- 1. K.P.MURALIDHARAN, S/O.PADMANABHAN,
KOTTAMMAVADI HOUSE, CHETTIYAMPARAMBU, KELAKAM
KOTTIYOOR, KANNUR (DRIVER).**
- 2. SURENDRAN.K.P., S/O.PADMANABHAN,
RESIDING -DO- (OWNER).**
- 3. NEW INDIA ASSURANCE COMPANY,
KALPETTA, LOCAL BRANCH OF THE INSURERS, KANNUR BRANCH.**

R3 BY ADV. SRI.VPK.PANICKER

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

avk

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

M.A.C.A.No.1794 of 2005

Dated this the 4th day of August, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J

Appeal arises in respect of the award dated 17.9.2002 passed by the Motor Accident Claims Tribunal, Wayanad, Kalpetta in O.P.(M.V.)No.99/02 involving is the case.

2. The deceased husband of the 1st appellant and the father of the other appellants was proceeding on his motorcycle bearing No.KL 12/A 3887 on 27.12.2001. While so, a lorry bearing No.KL 13/F 6536, driven by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent came from the opposite side and hit against the rider causing serious injuries to him. The injured was taken to the hospital, but the life could not be saved and he succumbed to the injuries on the same day. This lead to the claim petition preferred by the legal heirs who are the appellants herein. On completion of trial, the Tribunal passed an award granting a total sum of Rs. 3,26,750/- (computed under various heads) which was ordered to be satisfied by the Insurance Company with interest at the rate of 9% per annum. Inadequacy of the compensation made the claimant to approach this Court by filing the present appeal.

3. Heard the learned Counsel appearing for the appellant

as well as the learned Standing Counsel appearing for the respondent Insurance Company. The policy stands admitted. The notice sent to the 1st respondent has been signed whereas the notice to the 2nd respondent has been returned "unclaimed". As such the service of notice to the said respondent can be treated as complete. We heard the merits in detail. It is stated that, the deceased was a business man and was having a minimum income of Rs.6000/- per month and was maintaining the family consisting of the wife and children besides maintaining his own motorcycle. Despite this, the monthly income was reckoned by the Tribunal as Rs. 2,750/- out of which only Rs.1,750/- has been taken as the monthly contribution towards the family, thus working out a loss of dependency fixed at Rs.2,94,000/-. The amounts awarded under various heads as given below:-

<i>Loss of dependency</i>	-	<i>Rs. 2,94,000/-</i>
<i>Partial Loss of Earning</i>	-	<i>NIL</i>
<i>Transport to Hospital</i>	-	<i>250/-</i>
<i>Extra nourishment</i>	-	<i>NIL</i>
<i>Damage to clothing & articles</i>	-	<i>500/-</i>
<i>Medical Expenses & Bystanders</i>	-	<i>NIL</i>
<i>Funeral</i>	-	<i>5,000/-</i>
<i>Loss of Life</i>	-	<i>NIL</i>
<i>Pain, shock and suffering</i>	-	<i>5,000/-</i>
<i>Loss of love and affection</i>	-	<i>10,000/-</i>
<i>Loss of consortium</i>	-	<i>12,000/-</i>

4. After hearing both the sides, and also considering the fact that the deceased was aged 38 years, was maintaining his family consisting of wife and 2 minor children and also holding a

motorcycle. The income reckoned by the Tribunal appears to be on the lower side. It is true that no material was produced before the Tribunal to show the exact income. But considering the totality of the facts and circumstances, we find it fit and proper to reckon Rs.3,500/- for the purpose of calculation. The multiplier adopted by the Tribunal is only 14 and as per 2nd schedule it has to be 16. We adopt the higher multiplier as well. The loss of compensation reworked is as follows:-

$$(Rs.3500 \times 12 \times 2/3 \times 16) = \textbf{Rs. 4,48,000/-}$$

After giving credit of a sum of Rs.4,48,000/- (Rupees Four Lakh Forty Eight Thousand Only) awarded by the Tribunal, the balance comes to be Rs.1,54,000/-.

5. We find it necessary to enhance amounts awarded under some heads such as for funeral, only Rs.5,000/- was awarded by the Tribunal which is enhanced to Rs.10,000/- and there is to be a balance enhancement of Rs.5,000/- more under this head. For love and affection, only Rs.10,000/- was awarded by the Tribunal which is enhanced to Rs.50,000/- and there is to be a balance enhancement of Rs.40,000/- more under this head. For loss of estate an enhancement of Rs.5,000/- is provided. This Court is aware of the decision rendered in the Apex Court reported in **2013 Vol.III KLT 89 Rajesh. V. Rajiv Singh** that consortium is payable to an extent of nearly 1 lakh, but in the said case the date of accident was on 5.10.2007, whereas in the instant case it was

27.12.2001. Striking a balance in between, we find it fit and proper to grant an additional sum of Rs.50,000/- towards loss of consortium to the 1st appellant. In the above circumstance, the balance compensation payable in respect of the death involved herein is **Rs.2,99,000/-**. We shall be satisfied with the interest at the rate of 9% per annum from the date of petition filed before the Tribunal till receiving satisfied. The insurance company is directed to satisfy the said amount within 1 month. The appeal stands allowed to the said extent.

**Sd/-
P.R.RAMACHANDRA MENON
JUDGE**

**Sd/-
BABU MATHEW P. JOSEPH
JUDGE**

//TRUE COPY//

PA TO JUDGE

avk