

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 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

MACA.No. 1924 of 2005 ()

AGAINST THE AWARD IN OPMV 862/1997 of IST ADDL.M.A.C.T, KOZHIKODE DATED
16-05-2005

APPELLANT(S)/APPELLANTS/PETITIONERS::

1. SAHIRA. C., W/O. LATE P.P. ABDUL RAHIMAN
PADINJARE PEEDIKAKKAL HOUSE, P.O. ARIYALLUR
VIA PARAPPANANGADI, MALAPPURAM.

2. MUHAMMED FASIL P.P. (MINOR)
D/O. LATE P.P. ABDUL RAHIMAN
D/B 23-5-96 REP. BY GUARDIAN C. SAHIRA, MALAPPURAM.

3. FASEELA P.P. (MINOR)
D/O. LATE P.P. ABDUL RAHIMAN
D/B 9-12-93 REP.BY GUARDIAN C. SAHIRA
PADINJARE PEEDIKAKKAL HOUSE, P.O. ARIYALLUR
VIA PARAPPANANGADI, MALAPPURAM.

4. AYISHA P.P., W/O. LATE MUHAMMED,
PADINJARE PEEDIKAKKAL HOUSE, P.O. ARIYALLUR
VIA PARAPPANANGADI, MALAPPURAM.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S) :

1. E. UMMERALI, S/O. MOHAMMED HAJI,
EDASSERY HOUSE, THRIPPANGOTTU, TIRUR
MALAPPURAM DISTRICT.

2. K.C. NARAYANAN, S/O. CHINNAN,
THUNDASSERY HOUSE, B.P. ANGADI, MALAPPURAM DISTRICT.

3. NATIONAL INSURANCE CO.LTD.,
BRANCH OFFICE, KORAMBAYIL ARCADE, PANDIKKAD ROAD
MANJERI.

R,R3 BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 1924 of 2005

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Dated, this the 6th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal, in respect of the death of husband of the first appellant, father of the appellants 2 and 3 and son of the 4th appellant, is sought to be challenged by filing appeal by the claimants.

2. The accident was occurred on 23.11.1996. The deceased was travelling in a jeep bearing registration No. **KL10 C 3663** and when it reached at the place of occurrence, it collided with a bus bearing No. **KL 10 B 3092** causing fatal injuries to the deceased, who ultimately succumbed to the same. This was sought to be compensated by filing claim petition by the appellants herein. It was contended that the deceased was engaged as a driver at the Kingdom of Soudi Arabia and was earning a monthly income of Rs.8000/-

3. The evidence adduced before the Tribunal consists of documentary evidence of Exts. A1 to A4. No one was examined to substantiate the facts and figures. It is seen that there was no representation for the first respondent/owner of the vehicle. The

second respondent/driver was represented through a lawyer. Defence taken by the Insurance Company was only on general grounds. No violation of statutory/policy condition was brought to light. On conclusion of the Trial, the Tribunal arrived at a finding that the accident was occurred only because of the negligence on the part of the driver of bus/second respondent and worked out the compensation accordingly.

4. The deceased was aged 38 years at the time of the accident. Observing that no evidence was adduced to substantiate the monthly income of the deceased, a notional income of Rs.15000/- p.a. was reckoned. After deducting 1/3rd, an amount of Rs.10,000/- was taken into account and adopting the multiplier '16', an amount of Rs. 1,60,000/- was granted under this head. The amounts awarded by the Tribunal under other heads are as follows :

Funeral Expenses	:	Rs. 5000/-
Loss of consortium	:	Rs.10000/-
Loss of Estate	:	Rs. 5000/-
Pain and sufferings	:	Rs.10000/-

Thus, the Tribunal awarded a total compensation of Rs.190000/- and the same was directed to be satisfied with interest @ 6% p.a.

5. Heard the learned counsel for the appellant as well as the learned counsel appearing for the Insurance Company.

6. The learned counsel for the Insurance Company pointed out that the claim of the appellants as to the employment of the deceased as driver in a foreign country was not established and in the said circumstances the amount awarded by the Tribunal is just and proper. It is true that, but for the vague averments as to the income and employment, neither copy of the licence nor copy of the pass port and such other details are forming part of the record. Under such circumstances, the projected income as given in the claim petition is not liable to be reckoned. However, the fact remains that the deceased was aged at 38 years and was maintaining his family consisting of wife, two children and mother. Under such circumstances, the notional income can be fixed with reference to similar circumstances prevailing in India as made clear by the Apex Court in **Valsamma Vs. Binu Jose [2014 (1) KLT 10]**. In the light of the said verdict, had the victim been engaged in this country, probable income that could be derived by virtue of such engagement, has to be taken for fixing the compensation. This Court finds that the annual income taken by the Tribunal as Rs.15000/- per annum is abysmally low. The minimum

requirements to maintain a family and to meet the frugal comfort, notional income to be adopted must be of higher level and we find it fit and proper to reckon the same as **Rs.3000/- p.m.** Similarly, in view of the larger size of the family, the deduction needs to be restricted to $1/4^{\text{th}}$, in place of $1/3^{\text{rd}}$. On reworking the compensation under the head of 'loss of dependency', it will come to Rs.4,32,000/- [Rs.3000 x 12 x 16 x $\frac{3}{4}$]. After giving credit to Rs.1,60,000/- already granted by the Tribunal, the balance compensation payable under the head of loss of dependency will come to **Rs.2,72,000/-** [Rs.4,32,000 - Rs.1,60,000]. The Tribunal has awarded only Rs.10,000/- towards loss of consortium. As per the law declared by the Apex Court in **Rajesh Vs. Rajbir Singh [2013 (3) KLT 89 (SC)]**, the loss of consortium has to be compensated to an extent of Rs.1,00,000/-. The case considered by the Apex Court was in respect of the accident occurred in the year 2007, whereas in this case, the accident was occurred in the year 1996. In the said circumstances, we find it fit and proper to grant a sum of **Rs.40000/-** more under the head of loss of consortium. No amount has been awarded by the Tribunal towards the loss of love and affection and hence we grant a sum of **Rs.50000/-** under this head. The balance/additional

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compensation to be paid to the appellants will come to **Rs.3,62,000/- [Rupees Three lakhs Sixty two thousand only]**. Interest awarded by the Tribunal is only @ 6%, which ought to have been 7.5% at that point of time. The Apex Court has later made it clear that the rate of interest should be @ 9%. To Strike a balance, we find that interest @ 8% for the entire compensation will be just and reasonable. Since the policy stands admitted, the entire compensation amount with interest @ 8% shall be deposited by the Insurance Company, at the earliest, at any rate, within one month from the date of receipt of a copy of this judgment.

Appeal stands allowed to the said extent.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**K. HARILAL,
JUDGE**

kmd

/True copy/

P.A. to Judge