

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. 1925 of 2005 ()

AGAINST THE AWARD IN OPMV 920/1998 of the Addl. MACT,EKM DATED 25-04-
2005

APPELLANT(S)/APPELLANTS/PETITIONERS:

1. M.A.ISMAIL, AGED 66 YEARS
S/O. AHAMMED.

2. NABEESA ISMAIL, AGED 57 YEARS,
W/O. M.A. ISMAIL,

BOTH APPELLANTS ARE RESIDING AT MANATHU THOPPIL HOUSE,
THRIKKAKARA. P.O., COCHIN-21.

BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SMT.NITHYA.K.
SMT.MANJUSHA MOHANDAS

RESPONDENT(S) :

1. P.K.SAJUDEEN, S/O KUNJU MUHAMMED,
PULIKKAYATH HOUSE, SOUTH KALAMASSERY.

2. P.A. ABDUL KHADER, S/O. ASSAINAR
PUTHUKKADAN HOUSE, KUNNEKKADUMALA BHAGAM, VALLAM KARA
CHELAMATTOM VILLAGE, KUNNATHUNADU TALUK.

3. THE UNITED INDIA INSURANCE COMPANY
LIMITED, HOSPITAL ROAD, COCHIN-11.

4. THE NATIONAL INSURANCE COMPANY LTD.,
M.G. ROAD, ERNAKULAM.

R,R3 BY ADV. SRI.P.V.JYOTHI PRASAD
R,R4 BY ADV. SMT.SARAH SALVY

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. 1925 of 2005

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Dated, this the 6th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal has been preferred by the claimants in O.P.(M.V) No.920 of 1998 before the Additional Motor Accidents Claims Tribunal, Ernakulam projecting the grievance as to the inadequacy of the compensation awarded by the Tribunal in respect of the death of their son aged 28 years in a road traffic accident.

2. The deceased was proceeding on the motor cycle bearing No. **KL 7 H 76** on 14.10.1997 and while so, the bus bearing registration No. **KDE 1999** owned by the first respondent, driven by the second respondent and insured with the third respondent came from the opposite side and dashed against the motor cycle, causing serious injuries to the deceased leading to his death. This was sought to be compensated by filing claim petition before the Tribunal.

3. The owner and driver did not choose to contest the matter. The third respondent (insurer of the bus) contested the matter on general grounds, as no statutory defence/violation of policy condition

was pointed out. The evidence adduced before the Tribunal consists of documentary evidence of Exts. A1 to A6. No oral evidence was adduced from either side.

4. After conclusion of the Trial, the Tribunal arrived at a finding that the accident was occurred only due to the negligence on the part of the driver of the bus and proceeded to fix the compensation accordingly. Though the claimants put forward a case that the deceased was an 'aluminum fabricator' by profession and was earning a monthly income of Rs.4000/-, no evidence was adduced to substantiate these facts. In the said circumstances, the Tribunal fixed a notional income of Rs.15000/- and adopting multiplier of '13' awarded a sum of Rs.1,30,000/- under the head of loss of dependency. The amounts awarded under other heads are as follows :

Pain and sufferings	: Rs.5000/-
Transport to hospital	: Rs.1000/-
Funeral expenses	: Rs.2000/-
Loss of estate	: Rs.2500/-

Thus, the Tribunal granted a total compensation of Rs.1,40,500/- which was directed to be satisfied with interest @ 9% p.a. from the date of filing the petition.

5. Heard the learned counsel for the 3rd and 4th respondents insurance companies.

6. After hearing both the sides, this Court finds that no evidence was let in from the part of the claimants in support of the alleged employment and the income of the deceased. Still, at the time of the accident, the deceased was an able bodied youth of 28 years. Considering the economic situation prevailing in the year 1997, cost of living at that point of time and such other aspects, we find that the Tribunal ought to have been reckoned a higher base. We find it proper to reckon **Rs.2500/-** as monthly income of the deceased. Proper multiplier to be taken, considering the age of the deceased as per the law declared by the Apex Court in **Sarla Varma Vs. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** is '17'. On reworking the compensation, the amount payable under the head of loss of dependency will be Rs. 3,40,000/- [2500 x 12 x 17 x 2/3]. After giving credit to the amount already granted by the Tribunal, the balance amount payable under this head will come to **Rs.2,10,000/-** [340000 - 130000]. Only Rs.5000/- has been awarded under the head of pain and sufferings, which requires to be enhanced to Rs.10000/-, thus resulting in a balance of **Rs.5000/-**. We find it fit and proper to award a further

sum of **Rs.3000/-** towards the funeral expenses. No amount has been awarded towards the 'loss of love and affection' and we find it fit and proper to award a sum of **Rs.50000/-** under this head. On reworking the compensation as above, the appellants will be entitled to get an additional sum of **Rs.2,68,000/- [Rupees Two lakhs Sixty eight thousand only]**, which shall be satisfied with interest @ 9% p.a. from the date of filing claim petition. Since the policy stands admitted by the Insurance Company, the due amount shall be deposited by the company within one month from the date of receipt of a copy of this judgment.

The appeal stands allowed to the said extent.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
K. HARILAL,
JUDGE

kmd

/True copy/

P.A. to Judge