

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

M.A.C.A.No. 1484 of 2012 ()

AGAINST THE AWARD IN O.P.(MV) NO. 1661/2005 OF M.A.C.T., THRISSUR DATED
05.05.2012.

APPELLANT/3RD RESPONDENT:

NEW INDIA ASSURANCE CO.LTD.,
P.B.NO.43, PDC BANK BUILDING, HPO ROAD,
SULTHANPET, PALAKKAD-678 001.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/CLAIMANTS 1 AND 2 & R1 AND 2:

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1. RANJITHANAM, AGED 52 YEARS,
W/O.LATE HRIDAYASWAMI, KANNAMPUZHA CHERATTAYIL HOUSE,
"SEVANALAYAM", CHIYYARAM POST, THRISSUR DISTRICT
PIN-680 523.
 2. MARIYADAS, AGED 22 YEARS,
S/O.LATE HRIDAYASWAMI, -DO- -DO-, PIN-680 523.
 - *3. P.R.SUDHEEP,
S/O.RAMAKRISHNAN, PARACKAL HOUSE, VANDAZHI,
MUDAPALLUR POST, ALATHUR TALUK, PALAKKAD DISTRICT
PIN-678 706. (DELETED)
 - *4. RASHEED,
S/O.ABDUL MUTHALIF, POOTHANKODE, POST OLIMKADAVU,
MANGALAM DAM, PALAKKAD DISTRICT
PIN-678 508. (R3 & R4 ARE DELETED FROM THE PARTY ARRAY IN THE APPEAL AT
THE RISK OF THE APPELLANT /PETITIONER AS PER ORDER DATED 06/08/2012 IN I.A.
NO.1884/2012)

R1,R2 BY ADVS. SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.K.A.ANAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

**P.R. RAMACHANDRA MENON
&
SHAJI P. CHALY, JJ.**

M.A.C.A. No.1484 of 2012

Dated this the 1st day of December, 2015

JUDGMENT

Shaji P. Chaly, J.

This is an appeal preferred by the 3rd Respondent Insurance Company against the award in O.P.(MV) No.1661 of 2005 of M.A.C.T., Thrissur. The subject matter of the case is the accident occurred on 03.09.2004 while the deceased was riding a TVS 50 motorcycle bearing No.TN-41/E-4802 along the National Highway and a scooter bearing No.KL9/M-7156 came from the opposite direction, in a rash and negligent manner, ridden by 4th Respondent and owned by 3rd Respondent, collided with it, causing injuries to the deceased. Consequent to the accident, he died on 16.12.2004. Thereupon, a claim application was filed by the wife and son of the deceased under Sections 163A and 166 of Motor Vehicles Act. The Tribunal, after appreciating the rival contentions, has totally awarded an amount of Rs.3,40,000/- on various heads. Aggrieved by the said award passed by the Tribunal, this

appeal is preferred.

2. Heard learned counsel for the appellant and the learned counsel for the party Respondents.

3. The contention of the learned counsel for the appellant is that the award made by the Tribunal on various counts is excessive and not in accordance with Sec.163A of the Motor Vehicles Act.

4. We have perused the award passed by the Tribunal and find that funeral expenses awarded by the Tribunal was Rs.5,000/- against the schedule rate of Rs.2,000/-. So also, the Tribunal has awarded Rs.10,000/- towards loss of love and affection and loss of estate at Rs.5,000/- against the schedule rate of 'nil' and Rs.2,500/-, loss of consortium at Rs.20,000/- against the schedule rate of Rs.5,000/-. So also, under the head pain and suffering, the Tribunal has granted an amount of Rs.20,000/- against the schedule rate of Rs.5,000/-. That apart, an amount of Rs.12,300/- and Rs.2,000/- were granted towards bystander expense and transportation expenses respectively, for which there is no provision at all. The Tribunal while passing an award under Sec.163A is bound by the structured formula, is the contention of the appellant.

5. On certain counts, the Tribunal has awarded amounts exceeding the structured formula provided under the Second Schedule. For easy reference, the amounts awarded by the Tribunal and the amounts that are fixed under the Schedule are provided in the table given below:

<i>Sl. No.</i>	<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount specified in the II-Schedule</i>	<i>Difference</i>
1	Funeral expenses	Rs.5,000/-	Rs.2,000/-	Rs.3,000/-
2	Loss of love and affection	Rs.10,000/-	NIL	Rs.10,000/-
3	Loss of estate	Rs.5,000/-	Rs.2,500/-	Rs.2,500/-
4	Loss of consortium	Rs.20,000/-	Rs.5,000/-	Rs.15,000/-
5	Bystander expenses	Rs.12,300/-	NIL	Rs.12,300/-
6	Transportation expense	Rs.2,000/-	NIL	Rs.2,000/-
7	Pain and suffering	Rs.20,000/-	Rs.5,000/-	Rs.15,000/-
8	Total	Rs.74,300/-	Rs.14,500/-	Rs.59,800/-

5. Thus, the 1st Respondent is entitled to get only an amount of Rs.14,500/- against the amounts awarded by the Tribunal on various heads mentioned in the table above. Therefore, to that extent, the award passed by the Tribunal is modified. Thus, the total amount of Rs.3,40,000/- is modified and only Rs.2,80,200/- is awarded. Thus, the 1st Respondent is entitled to get Rs.2,80,200/-.

5. It is submitted by the learned counsel for the appellant that already 50% of the amount awarded by the

Tribunal is deposited. Therefore, there will be a direction to the appellant to deposit the balance amount with interest at the rate of 8% awarded by the Tribunal within 30 days from the date of receipt of a copy of this judgment.

The appeal is allowed accordingly.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
01.12.2015