

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

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

MACA.No. 1977 of 2005 ()

AGAINST THE AWARD IN OPMV 694/2001 of M.A.C.T. TIRUR DATED 05-01-2005

APPELLANT(S)/APPELLANTS/PETITIONERS:

1. PUTHANPEEDIKAKKAL MOHAMMED
AGED 55 YEARS, S/O.AHAMMED HAJI
(FATHER OF THE DECEASED HUSSAIN)
RESIDING AT PUTHEN PEEDIYAKKAL HOUSE, MELMURI, AMSOM
DESOM, P.O.KADAMPUZHA, MALAPPURAM DISTRICT.

2. PATHUMMA,
W/O.MOHAMMED, AGED 45 YEARS, (MOTHER OF THE DECEASED)
RESIDING AT PUTHEN PEEDIYAKKAL HOUSE, MELMURI, AMSOM
DESOM, P.O.KADAMPUZHA, MALAPPURAM DISTRICT.

3. KADEEJA,
D/O.MOHAMMED, AGED 18 YEARS
(UNMARRIED SISTER OF THE DECEASED).
RESIDING AT PUTHEN PEEDIYAKKAL HOUSE, MELMURI, AMSOM
DESOM, P.O.KADAMPUZHA, MALAPPURAM DISTRICT.

4. ABOOBACKER SIDDEEQUE,
S/O.MOHAMMED, AGED 15 YEARS, (BROTHER OF THE DECEASED)
RESIDING AT PUTHEN, PEEDIYAKKAL HOUSE, MELMURI AMSOM
DESOM, P.O.KADAMPUZHA, MALAPPURAM DIST., REP. BY HIS FATHER MOHAMMED

BY ADV. SRI.ESM.KABEER

RESPONDENT(S) :

1. A.G.AJAYAKUMAR, S/O GANGADHARAN
ABABTHA BAVANAM, P.O.KATTAPPANA, IDUKKI DISTRICT
DRIVER OF KSRTC KL 15/4508.

2. MANAGING DIRECTOR,
K.S.R.T.C. BUS, THIRUVANANTHAPURAM
OWNER OF THE KSRTC KL 15/4508.

3. NATIONAL INSURANCE CO LTD.,
ST.JOSEPH BUILDING, VAZHUTHAKKAD, THIRUVANANTHAPURAM.

4. K.MOIDEENKUTTY,
KUNNATH HOUSE, S/O.POCKER, P.O.PAINKANNUR
KUTTIPPURAM, OWNER OF JEEP KL 2B/1735.
5. NATIONAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, MAVOOR ROAD, KOZHIKODE
INSURER OF KL 2B/1735.

R2 BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC
BY ADV. SRI.JOY GEORGE, SC, K.S.R.T.C.
R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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M.A.C.A. No. 1977 of 2005

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Dated, this the 29th day of July, 2015

JUDGMENT

Babu Mathew P. Joseph, J.

The appellants are the claimants before the Motor Accidents Claims Tribunal. They are the legal representatives of Hussain, who sustained fatal injuries in a motor accident involving a jeep, by which he was travelling, and a bus belonging to the Kerala State Road Transport Corporation. Hussain succumbed to the injuries he had sustained in the accident. The appellants preferred a petition before the Motor Accidents Claims Tribunal, Tirur, claiming compensation on account of the death of Hussain. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence on the part of the first respondent, the driver of the KSRTC bus, and awarded a total compensation of Rs.3,70,000/- under various heads. The third respondent Insurance Company was directed to deposit the amount.

Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellants have preferred this appeal.

2. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the 3rd respondent. Since the insurance cover for the vehicle is admitted, notice to the respondents 1 and 2 is dispensed with.

3. The deceased Hussain was aged 24 years. He was employed in Malabar Co-operative Textiles, a spinning mill, during the relevant time earning a monthly salary of Rs.4004/-. His employment and earning had been proved by cogent evidence. The Tribunal has taken his monthly income as Rs.3000/- for the purpose of calculating compensation. The reason stated by the Tribunal that the salary certificate does not contain the deductions, for reducing the monthly income of the deceased to Rs.3000/- is not acceptable. Whatever may be the deductions, those deductions will only be from his income. So, his income was really Rs.4004/- at the relevant time. Therefore, the Tribunal ought to have taken that income as his income at that time. Since he was

aged only 24 and also considering the better prospects in relation to his income in future, we fix the monthly income of the deceased at Rs.6,000/- for the purpose of awarding compensation. The multiplier of 17 would be appropriate in this case. Since the deceased was a bachelor, following the law declared by the Honourable Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, 50% of his income can be deducted towards his personal and living expenses. Therefore, applying the multiplier of 17, the compensation for dependency works out at Rs.6,12,000/- ($\text{Rs.6000} \times 12 \times 17 \times 50 / 100$). Therefore we award the said amount as compensation for dependency. The learned Tribunal awarded only a paltry sum of Rs.9,500/- as compensation for pain and sufferings, funeral expenses, loss of love and affection and loss of estate. An amount of Rs.40,000/- is awarded towards compensation for loss of love and affection. Rs.10,000/- is awarded under the head of pain and sufferings. Rs.5000/- is awarded under the head of loss to estate. Rs.10,000/- is awarded under the head of funeral

expenses. Thus, the appellants are entitled to an additional amount of Rs.3,07,000/- [(Rs.6,12,000 + 40,000 + 10,000 + 5,000 + 10,000) - (3,70,000)] over and above the compensation awarded by the Tribunal. The said additional amount of Rs.3,07,000/- (Rupees three lakh and seven thousand only) shall carry interest @ 9% per annum from the date of filing of the claim petition till realization. The 3rd respondent Insurance Company is directed to deposit the amount within a month from the date of receipt of a copy of this judgment.

The appeal is allowed in part as above.

Sd/-

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

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE**

kmd