

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K. HARILAL

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

MACA.No. 373 of 2015

AGAINST THE AWARD IN OPMV 114/2012 of ADDITIONAL MOTO
ACCIDENTS CLAIMS TRIBUNAL-III, PALAKKAD DATED 09-06-2014.

APPELLANT(S)/3RD RESPONDENT:

RELIANCE GENERAL INSURANCE CO.LTD.,
PALAKKAD, REPRESENTED BY ITS DEPUTY MANAGER.
REGIONAL OFFICE, ERNAKULAM.

BY ADVS.SMT.K.S.SANTHI
SMT.LATHA SUSAN CHERIAN

RESPONDENT(S)/CLAIMANTS:

1. SIMY.S.,
W/O.LATE A.D.THOMAS, NARAYAN HOUSE, K.N.PUDUR,
KANJIKKODE, PALAKKAD PIN - 678 621.

2. DORAISWAMY A.,
S/O.AROGYASWAMY, NARAYAN HOUSE, K.N.PUDUR,
KANJIKKODE, PALAKKAD PIN - 678 621.

3. MARIYAMMA K.D.,
W/O.DORAISWAMY A, NARAYAN HOUSE, K.N.PUDUR,
KANJIKKODE, PALAKKAD PIN - 678 621.

4. ALEENA ROSE THOMAS (MINOR),
D/O.LATE A.D.THOMAS, REP. BY MOTHER
NATURAL GUARDIAN SIMY.S.,
IST RESPONDENT PIN - 678 621.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 07-10-2015, THE COURT ON 09-11-2015
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No.373 of 2015

Dated this the 9th day of November, 2015

JUDGMENT

Harilal, J.

The appellant is the 3rd respondent and the respondents herein are the claimants in O.P.(MV) No.114/2012 on the files of the Motor Accidents Claims Tribunal, Palakkad. The respondents, who are the legal heirs of one Thomas, who died in a road traffic accident, filed the above O.P. (MV) claiming compensation for the irretrievable loss suffered by them. According to the respondents, on 20/8/2011 at 14.30 hours while the said Thomas was riding a motorcycle, owing to the rash and negligent driving of the 2nd respondent in the O.P., the 'Scorpio' car

bearing Registration No. KL-51/5994 which was driven by him, hit the motorcycle and as a result of the hit, the said Thomas fell down and sustained severe injuries and later succumbed to his injuries. The 1st respondent in the O.P. was owner of the said vehicle and the appellant herein is the insurer of the said vehicle and the respondents 1 to 3 in the O.P. are jointly and severally liable to compensate the respondents for the loss suffered by them. The respondents claimed a total compensation of Rs.15,93,000/-.

2. To substantiate the claim of the respondents in evidence, Exts.P1 to P16 were marked. No evidence was adduced by the appellant. After evaluating the evidence on record, the Tribunal passed the impugned award granting a total compensation of Rs.9,48,000/- to the respondents with interest at the rate of 9% p.a. from the date of petition i.e., 31/1/2012 till realisation. The quantum of compensation determined by the Tribunal is challenged in this appeal on the ground

that the same is exorbitant and unreasonable.

3. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents.

4. The learned counsel for the appellant advanced arguments in extenso contending that the quantum of amount determined by the Tribunal under various heads are exorbitant, unreasonable and lacking supportive evidence. It is contended that the Tribunal went wrong in fixing the monthly income of the deceased at Rs.5,000/- and granting increase for future prospects at 30%.

5. The question that arises for consideration is, whether the quantum of compensation fixed by the Tribunal appears to be just and reasonable as provided under Sec.168 of the Motor Vehicles Act, 1988.

6. According to the respondents, deceased Thomas was self-employed as an Electrician and he was having sufficient qualification and experience as an Electrician. Going by the impugned award, it is

seen that the qualification, experience and competency of the deceased stand proved by Ext.A8 National Trade Certificate, Ext.A9 Provisional National Trade Certificate, Ext.A10 licence of electrical wiring works, Ext.A11 certificate of competency and Ext.A12 experience certificate. Thus, the evidence produced by the respondents proved that the deceased was a properly qualified, experienced and competent Electrician fully engaged in electrical works. Similarly, Ext.A14 statement of account, Ext.A15 pass book of the State Bank of India, and Ext.A16 pass book of the South Indian Bank proved that he had substantial earnings per month from his employment. In view of the documentary evidence referred above, the Tribunal is justified in fixing monthly income at Rs.5,000/-. That apart, having regard to money value and other relevant factors prevalent in the year 2011 also, we find that the monthly income fixed by the Tribunal is just and proper and no interference is called for.

7. As rightly held by the Tribunal, according to the decision of three Bench of the Apex Court in Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)], if the deceased is self-employed and aged between 40 and 50 years, the Tribunal is liable to make an addition of 15% to the monthly income considering the future prospects of the deceased. Therefore, we find that 15% addition was made in observance with the above decision and no interference is called for under the above head.

8. Similarly, in the above decision, the Apex Court held that it will be just, fair and equitable, under the head of funeral expenses, in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000/-. Further, in the above decision itself, the Apex Court held that it would be just and reasonable that the courts award at least Rs.1 lakh for the loss of consortium considering the missing of love, care and protection of the spouse.

9. On an analysis of the quantum of

compensation determined under various heads, we find that the quantum of compensation determined under those heads are just and reasonable and also in observance with the proposition laid down by the Apex Court in Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)]. There is no reason to interfere with the quantum of compensation fixed by the Tribunal and the contention that the quantum of compensation determined under various heads are exorbitant and unreasonable will stand rejected.

This appeal is devoid of merits and is dismissed.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge