

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 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

MACA.No. 865 of 2007

(AGAINST THE AWARD IN OPMV 1009/2002 of M.A.C.T., KOLLAM DATED
12-05-2006)

APPELLANTS/PETITIONERS:

1. SOSAMMA BABU, W/O. BABU CHERIYAN,
SURAJ BHAVAN, NEDIYAVILA PUTHEN VEEDU
HOSPITAL JUNCTION, PERUMPUZHA WARD (15 WARD)
KOTTAMKARA VILLAGE, KUNDARA, KOLLAM TALUK.

2. SURAJ BABU, 12 YEARS, S/O.BABU CHERIYAN,
SURAJ BHAVAN, NEDIYAVILA PUTHEN VEEDU
HOSPITAL JUNCTION, PERUMPUZHA WARD (15 WARD)
KOTTAMKARA VILLAGE, KUNDARA, KOLLAM TALUK.

3. SARATH BABU, S/O.BABU CHERIYAN,
SURAJ BHAVAN, NEDIYAVILA PUTHEN VEEDU
HOSPITAL JUNCTION, PERUMPUZHA WARD (15 WARD)
KOTTAMKARA VILLAGE, KUNDARA, KOLLAM TALUK.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS//RESPONDENTS:

1. DANIEL SIMON, THENGAZHIKATHU VEEDU,
XI/856, PERUMPUZHA, KOTTAMKARA
KUNDARA.

2. SIMON, S/O.DANIEL, THENGAZHIKATHU CHARUVILA VEEDU,
PERUMPUZHA, KOTTAMKARA, KUNDARA.

3. THE DIVISION MANAGER, M/S.NATIONAL
INSURANCE CO.LTD, KOLLAM, HOSPITAL ROAD
KOLLAM BRANCH.

R3 BY ADV. SRI.RAJAN P.KALIYATH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 14-09-2015, 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.865 OF 2007
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Dated this the 14th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the death of the deceased in a road traffic accident occurred on 27.05.2002 is the subject matter of challenge in this appeal preferred by the claimants/legal representatives.

2. On 27.05.2002 at about 5.30 p.m., when the deceased was travelling on his motor cycle bearing No. KL.2M/3303, he was knocked down by a mini lorry bearing No.KL.4/3776, which was coming from the opposite direction, causing fatal injuries. Despite the treatment given in the hospital, the life of the person could not be saved. This led to the Claim Petition filed before the Tribunal. The owner and driver of the vehicle did not choose to contest the matter and were set exparte. The claim was resisted by the Insurance Company on general grounds, particularly under quantum and negligence. Evidence, both oral

and documentary, was adduced from the part of the claimants by examining P.W.s 1 and 2 and also by marking Exts.A1 to A14. No evidence was adduced from the part of the respondents. On conclusion of the trial, the Tribunal arrived at a finding that the accident was only because of the rash and negligent driving of the mini lorry by the second respondent and the liability was fixed accordingly.

3. Despite the fact that the employment and salary were sought to be substantiated with reference to Ext.A12 salary certificate and Ext.A13 pass book issued by the concerned bankers showing the regular credit/inflow, the same was simply given a 'go-bye' by the Tribunal and only a sum of Rs.3000/- was reckoned on a notional basis, as monthly income. Compensation for death was worked out after deducting 1/3rd towards personal expenses and reckoning the multiplier of '15', considering the age of the deceased as above '40' years. A total compensation of Rs.4,62,000/- was awarded with interest at the rate of 7.5% , from the date of filing of the petition, which

is sought to be enhanced in this appeal.

4. Heard both the sides. After going through the materials on record and discussions made by the Tribunal and also after hearing both the sides, this Court finds that the duty cast upon the claimant was substantially discharged with regard to avocation and income of the deceased. It is true that quite a lot of uncertainties are there with regard to employment abroad, the tenure, income and such other aspects. It is also true that exact money equivalent, by converting 'Soudi Riyal' (with regard to the place where the deceased was working) to 'Indian Rupee' is not liable to be made and adopted as an automatic measure. Consideration is necessary with regard to financial/economic status and such other circumstances. The evidence adduced from the part of the claimants clearly reveal that the income reckoned by the Tribunal cannot be said as reasonable and is much on the lower side. Considering the totality of the facts and circumstances, we find it fit and proper to raise the same to Rs.6000/- to work out the compensation.

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5. The amounts awarded by the Tribunal under various heads are as given below:

<i>Head</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Transportation to hospital and funeral expenses	5000
Pain and suffering	5000
Permanent disability	432000
Loss of consortium	10000
Loss of love and affection	10000
TOTAL	462000

The compensation awarded by the Tribunal towards transportation and funeral, i.e. Rs.5000/- stands enhanced to Rs.10000/-, resulting in a balance of **Rs.5000/-**. Reworking the compensation, based on the enhanced salary, loss of dependancy comes to Rs.7,20,000/-(4000 x 12 x 15- after deducting 1/3 towards personal expense, the monthly salary comes to Rs.4000/-). After giving credit to the sum of Rs.4,32,000/-, the balance figure comes to **Rs.2,88,000/-**.

6. The Tribunal has awarded a sum of Rs.10000/- each

towards 'loss of consortium' and also for 'love and affection'. As per the verdict passed by the Apex Court in **Rajesh vs. Rajbir Singh** [2013 (3) KLT 89 (SC)], loss of consortium and loss of love and affection have been ordered to be compensated to an extent of Rs. One lakh each. But the accident in the said case occurred in the year 2007, whereas in the instant case it was on 27.05.2002. Considering the money value prevailing at the relevant point of time and such other circumstances, we find that the compensation payable under the above heads can be refixed as Rs.50000/- each. In the said circumstances, the above two heads would attract a balance payment of **Rs.40000/- each respectively**. Thus the total balance compensation payable in respect of death of the deceased is refixed as **Rs.3,73,000/- (Rupees three lakhs and seventy three thousand only)**, which shall be satisfied with interest at the rate of **9%** per annum from the date of the petition till the date of realisation. Since the policy stands admitted, the third respondent/Insurance Company is directed to deposit the said amount of compensation

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within one month from the date of receipt of a copy of the judgment. However, we make it clear that interest will not be payable for the period of delay of 246 days involved in filing the appeal before this Court.

Appeal stands disposed of.

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

**K. HARILAL,
JUDGE**

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