

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. 866 of 2007 ()

(AGAINST THE AWARD IN OPMV 27/2002 of M.A.C.T.,KOLLAM DATED 21-10-2005)

APPELLANTS/PETITIONERS.:

1. SNEHALATHA, W/O. MOHANDAS, KUNNEL VEEDU
PADINJATTAKKARA, THEVALAKKARA, KARUNAGAPPALLY
KOLLAM.

2. RESHMAM, S/O.SNEHALATH,
KUNNEL VEEDU, PADINJATTAKKARA, THEVALAKKARA
KARUNAGAPPALLY, KOLLAM.

3. RENJITH, S/O.MOHANDAS,
KUNNEL VEEDU, PADINJATTAKKARA, THEVALAKKARA
KARUNAGAPPALLY, KOLLAM.
(MINOR REP. BY IST APPELLANT SNEHALATHA).

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS/RESPONDENTS:

1. G. CHANDRASEKHARAN NAIR,
CHAKKANATTU HOUSE, PARAKKODU P.O., PATHANAMTHITTA.

** 2. G.RAJIKUTTY, S/O.GEORGEKUTTY,
VADAKKEKKALILIL VEEDU
KADAMPANADU.

[2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE
RISK OF THE PETITIONER AS PER ORDER DATED 10.07.2015 IN IA
2237/15.]**

3. BRANCH MANAGER, NATIONAL INSURANCE
COMPANY LIMITED, KOTTARAKKARA, UTHRADAM BUILDING
Q.S.ROAD, PULAMON, REPRESENTED BY THE
DIVISIONAL OFFICE, KOLLAM.

R3 BY ADV. SRI.P.JAYASANKAR

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.866 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.

The appeal has been preferred seeking for enhancement of compensation in respect of the death of the husband of the first appellant, occurred on 06.09.2001 because of collision between the bicycle on which the deceased was travelling and the bus owned by the first respondent, driven by the second respondent and insured by the third respondent.

2. The deceased, who was aged 38 years and stated as a self-employed person, while travelling/proceeding on his bicycle was knocked down by a bus bearing No.KEF-6402 causing fatal injuries. Subsequently, he bid farewell to this world, which led to the claim petition before the Tribunal. The owner and driver of the bus did not choose to contest the matter and were set ex parte. The claim was resisted by the Insurance Company on general grounds, but the issuance of policy was admitted. No

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oral evidence was adduced from the part of the claimants, but for producing and marking Exts. A1 to A10 from their side. After analysing the facts and figures, the Tribunal fixed negligence on the part of the driver of the bus and the liability was fixed accordingly. Reckoning only Rs.2000/- as the monthly income and adopting the multiplier of '16' based on the age of the deceased (also deducting 1/3rd towards personal expense), a sum of Rs.2,55,936/- was awarded as compensation payable in respect of the death/loss of dependency. The Tribunal has awarded a further amount of Rs.10000/- each, towards loss of consortium and loss of love and affection, apart from granting Rs.5000/-each in respect of pain and suffering and funeral/transportation expenses. The total compensation awarded is Rs.285936/- (which was rounded to Rs.286000/-). The above amount was ordered to be satisfied with interest at the rate of 7.5 % per annum from the date of the claim petition till realisation and the Insurance Company was directed to satisfy the same since the policy was admitted.

3. The question to be considered is whether the award

passed by the Tribunal is a just award as envisaged under Section 168 of the Motor Vehicles Act. It is true that no oral evidence was adduced from the part of the claimants in support of the claim as to the business which was being pursued or as to the monthly income. But the fact remains that the claimants were none other than the widow and two minor children. The very fact that the deceased was maintaining a family consisting of his wife and two children itself is a pointer as to the reasonable income to be taken by the Tribunal for working out the compensation because of sudden loss of the sole bread winner in the family. Considering the totality of the facts and circumstances, we find it fit and proper to reckon the notional monthly income as Rs.3000/- and the claim putforth by the petitioner in this regard cannot be held as arbitrary or exorbitant. On re-working the compensation as above, the amount payable in respect of the loss of dependency would come to Rs.3,84,000/- ($3000 \times 12 \times \frac{2}{3} \times 16$). After giving credit to the sum of Rs. 255936/-, the balance payable is **Rs.1,28,064/- (Rounded to Rs.1,28,000/-).**

4. 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 06.09.2001. Considering the money value prevailing at the relevant 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 balance payment of **Rs.40000/- each respectively.** Similarly we enhance the amount awarded under the head- funeral /transportation to Rs.10000/-. The balance payable under the said head is **Rs.5000/-**. Thus the total balance compensation payable in respect of death of the deceased is refixed as **Rs.2,13,000/- (Rupees two lakhs and thirteen 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, third respondent/Insurance Company is directed to deposit the entire amount of compensation 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 384 days involved in filing the appeal before this Court.

The appeal stands disposed of.

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

**K. HARILAL,
JUDGE**