

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

MACA.No.1313 of 2015 (F)

AGAINST THE AWARD IN OP(MV)No.2363/2005 OF PRL.M.A.C.T., KOZHIKODE
DATED 12-11-2008

APPELLANTS/PETITIONERS:

1. KAMALAKSHI. A.T., AGED 61 YEARS,
W/O.LATE GOPALAN NAIR, AMMANNOORTHAZHATH HOUSE,
P.O.KARUVISSERY, KOZHIKODE 673010.
2. SANDEEP, AGED 24 YEARS,
S/O.LATE SATHEESAN, AMMANNOORTHAZHATH HOUSE,
P.O.KARUVISSERY, KOZHIKODE 673010.
3. ASWINI, AGED 21 YEARS,
D/O.LATE SATHEESAN, AMMANNOORTHAZHATH HOUSE,
P.O.KARUVISSERY, KOZHIKODE 673010.
4. SANTHINI, AGED 39 YEARS,
W/O.LATE SATHEESAN, AMMANNOORTHAZHATH HOUSE,
P.O.KARUVISSERY, KOZHIKODE 673010.

BY ADV. SMT.K.V.RESHMI

RESPONDENT/2ND RESPONDENT:

NATIONAL INSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, NOOR COMPLEX, MAVOOR ROAD,
KOZHIKODE 673004, REPRESENTED BY ITS MANAGER.

BY ADV. SRI.RAJESH THOMAS
BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.1313 of 2015

Dated this the 3rd day of December, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the M.A.C.T., Kozhikode in O.P.(M.V.)No.2363 of 2005 in respect of the death of a person aged 36 years is the subject matter of challenge in this appeal preferred by the mother, widow and two children.

2. As a matter of fact, the award was passed as early as on 12.11.2008; whereas the appeal was filed with a petition to condone the delay of '2190 days' in filing the same. The reason stated in the affidavit of the party is that the lawyer, who was appearing before the Tribunal, had entrusted the matter with one Santhosh Kumar, who happened to be the clerk of the lawyer who is representing the party before the High Court. But he had not entrusted the matter and had misappropriated the amounts given to

him in connection with the filing of the appeal. The party concedes in the affidavit that the lawyer was contacted only after about 6 years and it was only then, that she was given to understand that no steps were taken. There were similar other cases as well, finally leading to filing of a complaint by the lawyer against her own clerk, ultimately leading to cancellation of registration of her clerk. Even after the alleged entrustment of the case, absolutely no effort was taken by the claimants or the lawyer who represented them before the Tribunal with regard to the follow up steps as to the filing of appeal. The first attempt in this regard itself was admittedly taken after several years. However, the delay happened to be condoned by this Court when the matter came up for consideration before another Bench on 4.8.2015 observing that, if at all any enhancement is ordered, the appellants would not be entitled to get interest for the period of delay.

3. The accident occurred on 4.8.2005, when the deceased was proceeding as a pedestrian along the road. He was knocked down by a bus bearing No.KL-11/L-3399 owned by the 1st respondent before the Tribunal and insured by the 2nd respondent who is the respondent herein. It appears that the owner/insured of the vehicle did not contest the matter and was set exparte. Since no statutory ground of defence under Section 149(2) of the M.V.Act was available, the matter was contested by the Insurance Company only on general grounds. No evidence was adduced from the part of the claimants, but for producing a copy of the F.I.R., copy of the postmortem report and copy of the Family Membership Certificate as Exts.A1 to A3 respectively. Nobody was examined to substantiate the factual particulars as to the age, occupation, income and such other relevant aspects. The Tribunal arrived at a finding that the accident was only because of the negligence

on the part of the driver of the bus. Awarding amounts under different heads, a total compensation of ₹2.75 lakhs was granted, which was directed to be satisfied with interest @ 7% per annum from the date of petition, i.e., 22.10.2005, which is sought to be enhanced by way of filing this appeal.

4. Heard the learned counsel for the appellant as well as the learned counsel for the insurance company.

5. At the very outset, we can't but mention that this case was conducted before the Tribunal in a shabby manner, displaying a casual and cursory approach; despite the fact that it was a case involving death of an innocent victim. No minimum effort was taken to cause anybody to be examined or to adduce any evidence to enable the Tribunal to award 'just' compensation as contemplated under Section 168 of the M.V.Act. It was on the basis of the available materials, that the Tribunal passed an award, granting a sum of ₹2.75

lakhs. At the same time, we cannot simply shut our eyes to make it dark as to the minimum income which would have been generated by the deceased, being a person of '36 years' and was maintaining his family consisting of his mother, widow and two children (4 members). Considering the said circumstance which could be visualized by this Court and also considering the fact that the accident was on 4.8.2005, we find it appropriate to fix the monthly income as ₹3,000/- instead of ₹2,000/- adopted by the Tribunal. It is seen that the Tribunal has reckoned the multiplier as 16, which actually ought to have been '15'. On reworking the compensation towards the loss of disability it comes to ₹3,60,000/- ($₹3,000 \times 12 \times 2/3 \times 15$). Deducting the amount of ₹2.56 lakhs awarded by the Tribunal the balance amount comes to **₹1,04,000/-**.

6. Only sum of ₹10,000/- has been awarded by the Tribunal towards 'loss of consortium' and no amount has

been awarded towards 'loss of love and affection'. We are aware of the verdict passed by the Apex Court in **Rajesh Vs. Rajbir Singh [2013 (3) KLT 89(SC)]** whereby it was held that loss of consortium and loss towards love and affection require to be satisfied to an extent of Rupees one lakh each. But the accident in the said case was in the year 2007. The position was subsequently considered by a Division Bench of this Court and it was held in **Valsamma Vs. Binu Jose (2014 (1) KLT 10)** that the amounts payable under these heads have to be awarded with reference to the age of the deceased and also that of the claimant. In the instant case, the accident was in the year 2005, as mentioned already. Considering the totality of the facts and circumstances, we find it appropriate to grant a sum of ₹50,000/- towards 'loss of consortium' to the first appellant and after setting off the amount of ₹10,000/- awarded, the balance comes to **₹40,000/-**. Coming to loss

of love and affection, we find that the compensation in this regard cannot be measured in golden scales. It is true that the mother was aged more than 61 years, but the widow was only of '39 years' at the time of demise the deceased, is survived by two minor children as well. Considering the said facts and circumstances, we find that it would only be appropriate, if we award a sum of **₹1,00,000/-** in total payable to all the claimants jointly. We award the same accordingly. The Tribunal has awarded a sum of ₹2,500/- towards funeral expenses which requires to be scaled upto ₹10,000/- and as such, a balance sum of **₹7,500/-** requires to be paid under this head as well. The total balance compensation payable comes to **₹2,51,500/-** (₹1,04,000 + 40,000 + 1,00,000 + 7,500) which requires to be satisfied with interest @ 9% per annum from the date of the petition, except for the period of delay of '2190 days' condoned as per order dated 4.8.2015 and in conformity with the

direction therein as contained in the last paragraph incorporated as a condition for condoning the delay.

Since the policy is admitted, we direct the insurance company to deposit the said amount within a period of 'one month' from the date of receipt of a copy of this judgment.

The appeal stands disposed of accordingly.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj

True copy

P.A to Judge