

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

MACA.No. 1315 of 2015 ()

AGAINST THE AWARD IN OPMV 221/2008 of PRINCIPAL MOTOR ACCIDENT CLAIMS
TRIBUNAL, KOZHIKODE DATED 19-10-2009

APPELLANT/PETITIONER:

1. KODUNGUTHAI, AGED 34 YEARS
W/O. LATE KALIMUTHU, RESIDING AT KE LANE QUARTERS
VELLAYIKKAD ROAD, P.O PERUMANNA, KOZHIKODE
2. ANNAPACKIAM
W/O. MADASWAMY THEVER, RESIDING AT KE LANE QUARTERS
VELLAYIKKAD ROAD, P.O PERUMANNA, KOZHIKODE

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S)/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO.LTD
DIVISIONAL OFFICE, SILVER PLAZA BUILDING, I.G ROAD
KOZHIKODE 673 001 REPRESENTED BY ITS MANAGER

BY ADV. SRI.LAL GEORGE
SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 09-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.1315 OF 2015

DATED THIS THE 9th DAY OF DECEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Insufficiency of compensation awarded by the Tribunal in respect of the death of the husband of the 1st appellant (son of the 2nd appellant) in a road traffic accident, is the subject matter of challenge in this appeal preferred by the claimant seeking for enhancement.

2. The accident occurred was on 9.10.2006. The deceased aged about 32 years was proceeding on his motor cycle bearing No.TN-76/Z-4235, when he was knocked down by a car bearing No.PY-01/H-9515 owned, driven and insured by respondents 1 to 3 before the Tribunal. Fatal injuries were sustained by the deceased, who ultimately succumbed to the same on the same day. Loss was sought to be compensated by filing the claim petition. The matter was contested by the concerned respondent only on the ground of negligence and quantum. No violation of any statutory/policy condition was cited or established from the part of the Insurance Company. The evidence consists of documents produced as Exts.A1

FIR and FIS, A2 postmortem report and A3 legal heirship certificate. Nobody was examined on either side. In the said circumstance, based on the available materials, the Tribunal fixed the negligence solely upon the driver of the car and proceeded to fix compensation accordingly.

3. The case of the claimants put forth before the Tribunal was that, the deceased was eking out his livelihood as a scrap merchant and that he was having a monthly income of ₹10,000/-. But, as mentioned already, no evidence was adduced and nobody was caused to be examined, under which circumstance, the Tribunal reckoned the notional income as ₹2,500/- per month. But, the fact remains that, the accident occurred was in the year 2006. It is also relevant to note that the deceased was aged 32 years and he was maintaining a family consisting of his wife and mother. In the said circumstance, we find it appropriate to re-fix the notional monthly income as ₹4,000/-. The amounts awarded by the Tribunal under various heads require to be boosted up in the said circumstance.

4. The total amount awarded by the Tribunal, to the tune of ₹3,35,000/-, was ordered to be satisfied with interest @ 7%

per annum from the date of petition. The amounts awarded under different heads as give in paragraph No.12 are as given below:

Transport	:	₹ 1,500/-
Damage to clothing	:	₹ 500/-
Funeral expenses	:	₹ 3,000/-
Loss of love and affection	:	₹ 10,000/-
Loss of estate	:	₹ 10,000/-
Loss of consortium	:	₹ 10,000/-
Loss of dependency	:	₹ 3,00,000

Total	:	₹ 3,35,000/-
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5. After hearing both the sides, this Court finds that the amount awarded under some heads, particularly, towards funeral expenses, loss of love and affection, loss of consortium and loss of dependency require to be enhanced. Adopting the multiplier of '16' instead of '15' as adopted by the Tribunal based on the principle enunciated by the Apex Court in **Sarala Verma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, compensation towards loss of dependency would come to ₹5,12,000/- (i.e., $4000 \times 12 \times 2/3 \times 16 = 5,12,000/-$). After deducting the sum of ₹3,00,000/-, already awarded, the balance comes to **₹2,12,000/-**. The Tribunal has awarded only a sum of

₹10,000/- each in respect of loss of love and affection and loss of consortium. The Apex Court has held in **Rajesh v. Rajbir Singh (2013 (3) KLT 89)** that amounts payable under these heads are to be at the rate of ₹1,00,000/- each. But accident in the said case was in the year 2007. The matter was considered by a Division Bench of this Court with reference to the aforesaid judgment as laid down in **Valsamma v. Binu Jose (2014 (1) KLT 10)** and held that the amount payable under the above heads are to be with reference to the age of the deceased and the claimants. Striking a balance, we find it appropriate that amounts under both the above heads require to be enhanced and we fix the same as ₹50,000/- each, thus resulting in a balance sum of **₹40,000/-** towards loss love and affection and another **₹40,000/-** under the head loss of consortium. The funeral expenses awarded by the Tribunal is only ₹3,000/-. We enhance the same by a further sum of **₹17,000/-** so as to make the total as ₹20,000/-. The total balance compensation payable comes to **₹3,09,000/-** which requires to be satisfied with interest at the rate of 9% per annum from the date of petition. However, we find that there was inordinate delay in filing the appeal before

this Court and the said delay of 1895 days was condoned by this Court as per order dated 4.9.2015 subject to the specific rider that in case the appellant succeeds in getting enhancement of the compensation, they will get interest only from the date of the order, i.e., 4.9.2015.

6. In the above circumstance, the enhanced compensation of **₹3,09,000/-** is directed to be satisfied with interest at the rate of 9% per annum from 4.9.2015. The due amount shall be deposited by the respondent Insurance Company within one month from the date of receipt of a certified copy of this judgment.

The appeal is allowed to the above extent. No cost.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S.to Judge