

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. 1426 of 2015 ()

AGAINST THE AWARD IN OPMV 947/2009 of PRINCIPAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL, KOZHIKODE DATED 23-03-2010

APPELLANTS/PETITIONERS:

1. SAID MAHAMUN JIFRI AGED 43 YEARS
S/O. S.H JIFRI THANGAL, THEVARA PARAMBATH HOUSE
(PO) PERUVAYAL, KOZHIKODE
2. SHAREEFA RAMLA BEEVI, AGED 34 YEARS
W/O. SAID MUHAMUN JIFRI, THEVARA PARAMBATH HOUSE (PO)
PERUVAYAL, KOZHIKODE
3. FATHIMA HIBA (MINOR) AGED 15 YEARS
D/O. SAID MUHAMUN JIFRI, THEVARA PARAMBATH HOUSE
(PO) PERUVAYAL
KOZHIKODE
(REPRESENTED BY HER FATHER AND LEGAL GUARDIAN SAID MAHAMUN JIFRI)

BY ADV. SMT. K.V. RESHMI

RESPONDENT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO. LTD.
1ST FLOOR, TARIFF BAZAR, OPP. TOWN HALL
TIRUR, MALAPPURAM, REPRESENTED BY ITS MANAGER

BY SRI. A.A. ZIYAD RAHMAN
ADV. SMT. RAJI T. BHASKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD 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.1426 OF 2015

DATED THIS THE 9TH DAY OF DECEMBER, 2015

JUDGMENT

ANIL K.NARENDRA , J.

The appellants are the claimants in O.P.(MV)No.947/2009 on the file of the Principal Motor Accident Claims Tribunal, Kozhikode. It was an application filed under Section 166 of the Motor Vehicles Act, claiming compensation on account of the death of a child aged 6 years, in a motor accident occurred on 3.3.2009. The appellants are respectively the father, mother and sister of the deceased child.

2. Going by the averments in the claim petition, while the deceased was standing on the road, a motor cycle bearing registration No.KL-11/L-0966 hit him causing serious injuries and subsequently he succumbed to injuries. The 1st respondent is the owner of the motor cycle, 2nd respondent is the rider and the 3rd respondent is the insurer of the said vehicle. It was alleged that the accident occurred due to the rash and negligent riding of the motor cycle by the 2nd respondent.

3. Before the Tribunal, Exts.A1 to A4 were marked on the

side of the appellants. Both sides have not chosen to adduce any oral evidence. After considering the materials on record, the Tribunal awarded a total compensation of ₹1,70,000/- under different heads together with interest @7% per annum from the date of the petition and the 3rd respondent insurer was directed to pay the said amount to the claimants. Dissatisfied with the compensation awarded by the Tribunal, the appellants are before this Court in this appeal.

4. We heard arguments of the learned counsel for the appellants and also the learned counsel appearing for the respondent insurer.

5. The sole issue that arises for consideration in this appeal is as to whether the compensation awarded by the Tribunal under different heads represent a just and reasonable compensation and whether it requires any modification at the hands of this Court.

6. The pleadings and materials on record would show that the deceased was a child aged 6 years at the time of accident. Fixing an annual income of ₹15,000/- and applying the multiplier of 15, and deducting 1/3rd towards personal expenses,

the Tribunal awarded a sum of ₹1,50,000/- towards loss of dependency. Relying on the judgment of the Apex Court in **Kishan Gopal and another v. Lala and others (2014 (1) SCC 244)**, the learned counsel for the appellant would contend that the annual income of the deceased should have been taken as ₹30,000/-. We find considerable force in the said submission made by the learned counsel for the appellants. In the result, the notional annual income of the deceased is refixed as ₹30,000/-. Applying the multiplier of 15 and deducting 1/3rd towards personal expenses, the appellants will be entitled for a total amount of ₹3,00,000/- ($30,000 \times 2/3 \times 15$) towards loss of dependency. Thus the appellants will be entitled for an additional compensation of **₹1,50,000/-** under this head.

7. Towards pain and suffering, the Tribunal awarded a sum of ₹5,000/-. Considering the fact that the deceased succumbed to injuries after inpatient treatment for 4 days, we deem it appropriate to refix the compensation under the aforesaid head as ₹10,000/-. In the result, the appellants will be entitled for an additional compensation of **₹5,000/-** under this head.

8. Towards funeral expenses, the Tribunal awarded only a meagre sum of ₹3,000/-. In **Rajesh v. Rajbir Singh (2013 (3) KLT 89)**, the Apex Court held that in the absence of evidence to the contrary for higher expenses, the courts have to award at least an amount of ₹25,000/- towards funeral expenses. In that view of the matter, we refix the compensation payable under the head funeral expenses as ₹25,000/-. In the result, the appellants will be entitled for an additional compensation of **₹22,000/-** under this head.

9. Towards loss of love and affection, the Tribunal awarded a sum of ₹10,000/-. The deceased was aged 6 years at the time of accident. The 1st and 2nd appellants are the parents and the 3rd appellant is the sister of the deceased, who were aged 37, 28 and 9 years respectively at the time of accident. In **Jiju Kuruvila and others v. Kunjamma Mohan and others (2013 (3) KLT 261)** and **Chanderi Devi and another v. Jaspal Singh and others (2015 (4) Scale 390)**, the Apex Court awarded ₹1,00,000/- towards loss of love and affection. In that view of the matter, we refix the compensation towards loss of love and affection as ₹1,00,000/-. Accordingly, the appellants

will be entitled for an additional compensation of **₹90,000/-** under this head. In the result, the appellants will be entitled for an additional compensation of **₹2,67,000/-** under the aforesaid heads.

10. The Tribunal awarded interest at the rate of 7% per annum from the date of petition till deposit. In **Kaushnuma Begum v. New India Assurance Co. Ltd. (2001 (2) SCC 9)**, taking note of the fact that the nationalised banks are granting interest at the rate of 9% per annum on fixed deposits for one year, the Apex Court directed that, the compensation amount refixed shall bear interest at the rate of 9% per annum from the date of the claim. Applying the principle laid down in the aforesaid judgment, we deem it appropriate to hold that the appellants will be entitled for interest at 9% per annum for the additional compensation awarded in this appeal.

11. However, considering the fact that the appeal was filed with a delay of 1790 days, the appellant will not be entitled for interest for the period of delay from 21.6.2010 till 26.5.2015, in terms of order dated 18.8.2015 in C.M.Application No.1585/15.

12. Since the insurance coverage of the vehicle involved in

the accident is admitted, the 3rd respondent insurer shall deposit the additional compensation awarded in this appeal together with interest before the Tribunal within a period of one month from the date of receipt of a certified copy of this judgment.

The appeal is disposed of as above.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

dsn

True copy

P.s.to Judge