

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. 1491 of 2015 ()

AGAINST THE AWARD IN OPMV 672/2006 of PRINCIPAL MOTOR ACCIDENT CLAIMS
TRIBUNAL, KOZHIKODE DATED 6.4.2009

APPELLANTS/PETITIONERS:

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1. NASLA, AGED 27 YEARS
W/O. (LATE) ABDUL SATHAR, MARAKKAYIL HOUSE
KOTHORTHODE, P.O. KARUVANTHURUTHI, FEROKE
KOZHIKODE-673631.
 2. KUNHEEN, AGED 79 YEARS
S/O. MAMUNNI, MARAKKAYIL HOUSE, KOTHORTHODE
P.O. KARUVANTHURUTHI, FEROKE, KOZHIKODE-673631.
 3. NAFEESA, AGED 69 YEARS
W/O. KUNHEEN, MARAKKAYIL HOUSE, KOTHORTHODE
P.O. KARUVANTHURUTHI, FEROKE, KOZHIKODE-673631.

BY ADV. SMT. K.V. RESHMI

RESPONDENT/2ND RESPONDENT:

THE ORIENTAL INSURANCE CO. LTD.
JASEELA COMPLEX, NILAMBUR ROAD, MANJERI
MALAPPURAM-676121, REPRESENTED BY ITS MANAGER.

BY ADV. SRI. M. JACOB MURICKAN
ADV. SMT. K.S. SANTHI

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.1491 OF 2015

DATED THIS THE 3rd DAY OF DECEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

This appeal arise from the award dated 6.4.2009 passed by the Principal Motor Accident Claims Tribunal, Kozhikode in OP(MV) No.672/2006. Inadequacy of the compensation is the subject matter of challenge. The loss sought to be compensated was in respect of death of the husband of the 1st appellant and son of appellants 2 and 3.

2. As a matter of fact, the award was passed way back on 6.4.2009 and the appeal was filed seeking to condone the delay of '2143 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 the clerk had not handed over the file and had misappropriated the amounts given to him in connection with the filing of appeal. The party herself says in the affidavit that she contacted the lawyer only after about 6 years and it was only then

she was given to understand that no proceedings were taken. It is stated that 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. However the delay happened to be condoned by this Court, when the matter came up for consideration before another Bench on 23.7.2015 observing that, if at all any enhancement is ordered, the appellants will not be entitled to get interest for the period of delay.

3. The deceased was driving a maruthi omni van bearing No.KL-18/A-4951. A bus bearing No.KL-10M-5535 owned by the 1st respondent before the Tribunal came from the opposite side and dashed against the maruthi van causing fatal injuries leading to his death occurred on 8.1.2006. This was sought to be compensated by filing claim petition by the legal representatives. The evidence adduced before the Tribunal consists of the four documents produced as Annexures A1 to A4. Nobody was examined on either side. After considering the available materials on record, the Tribunal held that it was a case of 'head on collision' and the liability was actually to be fixed equally upon the drivers of both the vehicles. However, taking a lenient view, it was held that the total compensation fixed as

₹94,000/- in respect of the demise of the person aged 28 years would stand reduced to an extent by 10%.

4. Heard learned counsel for the appellant as well as learned Standing Counsel for the Insurance Company.

5. It is seen from the award that the multiplier has been fixed as '5', considering the age of the parents of the deceased as 70 years and 60 years respectively. The existence of the widow of the deceased, who happens to be the 1st claimant/1st appellant herein has been simply ignored, doubting her marriageable age and the relationship with the deceased, which could be legally reckoned. Making some observations, merely on surmises and conjectures, as given in paragraph No.8, the Tribunal has held that she might have been a minor and that the alleged marriage could not be approved by the Court. The discussion made by the Tribunal does not impress this Court in any manner, as the Tribunal has obviously gone beyond the track with regard to the jurisdiction conferred upon it as per the provisions of the Motor Vehicles Act. That apart, there was absolutely no challenge with regard to the marital status of first claimant with the deceased and no evidence was adduced in this regard from the part of the respondent/Insurance Company, who

alone contested the matter. The finding and reasoning given by the Tribunal in this regard is not liable to be accepted and we hold it accordingly.

6. It is now settled law, by virtue of judgments rendered by the Apex Court on many an occasion including in **Sarala Verma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** that appropriate multiplier has to be fixed with reference to the age of the deceased. In the instant case, since the deceased was aged 30 years, as revealed from the postmortem certificate, the multiplier ought to have been '17'. The amounts awarded by the Tribunal under various heads as discussed in paragraph No.9 are as given below:

Dependency	:	₹80,000/-
Pain and suffering	:	5,000/-
Love and affection	:	5,000/-
Transportation	:	1,500/-
Funeral expenses	:	2,500/-

Total	:	<u>94,000/-</u>

We find that the compensation awarded by the Tribunal in respect of demise of a person aged 30 years as on 8.1.2006 is abysmally on the lower side, which requires modification. It is true that the occupation and income were never proved. But the fact remains that the deceased was a married man survived by the first claimant/first

appellant-widow and aged parents. Considering the economic situation prevailing as on the date of accident, we find it appropriate to reckon a sum of ₹4,000/- as the monthly income to work out loss of dependency, adopting the multiplier of 17, which means $4000 \times 12 \times 2/3 \times 17 = \mathbf{₹5,44,000/-}$ (after deducting $1/3^{\text{rd}}$ towards personal expenses). After setting off the sum of ₹80,000/- awarded by the Tribunal, the amount payable towards loss of dependency is fixed as **₹4,64,000/-**. Amount awarded by the Tribunal towards loss of love and affection is only ₹5,000/-. No amount has been awarded towards loss of consortium. In **Rajesh v. Rajbir Singh (2013 (3) KLT 89)**, the Apex Court held that a sum of ₹1,00,000/- each is liable to be paid under these two heads. The accident involved in the said case was in the year 2007, whereas the accident in the present case is much prior to that. Striking a balance, we find it appropriate to grant a sum of **₹75,000/-** towards loss of consortium to the first appellant. Equal amount is awarded towards 'loss of love and affection' to the parents and the balance payable after giving credit to the sum of ₹5,000/- awarded by the Tribunal, it comes to **₹70,000/-**. Only a sum of ₹2,500/- was awarded by the Tribunal towards funeral expenses. We enhance the same by **7,500/-** rupees more, to make

it ₹10,000/-. Thus, the total balance compensation payable would be **₹6,16,500/-**. After deducting 10% as ordered by the Tribunal in respect of the contributory negligence on the part of the deceased, the actual amount payable by the respondent Insurance Company is fixed as **₹5,54,850/-**. This requires to be satisfied with interest at 9% from the date of petition till realisation, **except the period of delay of 2143 days**, condoned as per order dated 23.7.2015 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 respondent Insurance Company to satisfy the amount within one month from the date of receipt of a copy of this judgment.

The appeal stands disposed of as above.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S.to Judge