

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

MACA.No. 109 of 2009 ()

AGAINST THE AWARD IN OPMV 360/2004 of M.A.C.T.,KOZHIKODE
DATED 20-09-2007

APPELLANT(S)/CLAIMANTS:

1. ROHINI PRASAD, W/O. LATE PRASAD,
RARANTHODUKAYIL VEEDU, P.O. ELATHOOR, KOZHIKODE.
2. PRANAV (MINOR), AGED 14 YEARS, REPRESENTED BY THEIR
MOTHER AND LEGAL GUARDIAN ROHINI PRASAD, RESIDING AT
RARANTHODUKAYIL VEEDU, P.O. ELATHOOR, KOZHIKODE.
3. PRAGALEESH (MINOR), AGED 9 YEARS, REPRESENTED BY THEIR
MOTHER AND LEGAL GUARDIAN ROHINI PRASAD, RESIDING AT
RARANTHODUKAYIL VEEDU, P.O. ELATHOOR, KOZHIKODE.
4. VIGHNESH (MINOR), AGED 7 YEARS, REPRESENTED BY THEIR
MOTHER AND LEGAL GUARDIAN ROHINI PRASAD, RESIDING AT
RARANTHODUKAYIL VEEDU, P.O.ELATHOOR, KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S)/RESPONDENTS:

1. C.V. BALAGOPALAN, PROPRIETOR,
METALEX INDIA ROLLING MILLS,
MINI INDUSTRIAL ESTATE,P.O. MELADI, KOZHIKODE.

2. ORIENTAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, SREENIDHI BUILDING, P.B. NO.27,
NARAYANA NAGAR, VADAKARA.

R2 BY SR.ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 30-09-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

OKB

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.A.C.A.No.109 of 2009

Dated this the 30th day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

Adequacy of compensation awarded in respect of the death of a person aged 40 years, who was the sole breadwinner of the family, pursuant to the accident occurred in a road traffic accident virtually throwing his widow and children to the streets, is the subject matter of challenge in this appeal.

2. The deceased by name Prasad was proceeding on a bicycle when the mini lorry bearing No.KL-11/A-1202 came from the opposite side, knocked him down by about 7.30 p.m. on 3.10.2003. This led to the claim petition filed before the Tribunal by the widow and three minor children claiming a total compensation of Rs.4 lakhs. The case projected by the appellants before the Tribunal was that the deceased was a general worker earning a monthly income of Rs.5,000/-.

The evidence adduced before the Tribunal consists of Exts.A1 to A4 alone and nobody was examined from either side and no document was produced with regard to the avocation or income.

3. After hearing both the sides, the Tribunal found that the accident was occurred only because of the negligence on the part of the driver of the mini lorry and proceeded to work out the compensation. Observing that no evidence was adduced as to the occupation or income, only a sum of Rs.2,250/- was taken as the notional monthly income. The amounts awarded by the Tribunal under various heads are discussed in paragraph-8 of the Award in the following terms:

Dependency	-	Rs.2,88,000/-
Pain and suffering	-	Rs.5,000/-
Consortium	-	Rs.10,000/-
Funeral Expenses	-	Rs.2,000/-
Transportation	-	Rs.1,000/-

		Rs.3,06,000/-
		=====

This, according to the appellants, is totally inadequate and hence sought to be challenged.

4. Heard the learned counsel appearing for the

appellants as well as the learned counsel appearing for the Insurance Company at length. It is true that no evidence was adduced with regard to the work or income of the deceased. But, the fact remains that the accident occurred was in the year 2003 and the deceased was maintaining his family consisting of widow and three minor children, which by itself is a point as to the fact that he was earning something at least for their subsistence, providing minimum frugal comforts. Under such circumstance, much evidence cannot be insisted, more so in view of the law declared by the Supreme Court in the decision reported in *Bava v. State of Kerala* [2014 (3) KLT 735].

5. After hearing both the sides, we find it just and appropriate to reckon a sum of Rs.3,500/- as the monthly income for working out the compensation. Considering the age factor, having crossed 40 years, the multiplier could have been '15' as per the verdict passed by the Supreme Court in *Sarla Verma v. Delhi Transport Corporation* [2010 (2) KLT 802]. This means, the loss of dependency has to be compensated to an

extent of $3500 \times 12 \times 15 \times \frac{3}{4}$ (reckoning the number of members of the family and restricting the personal expenses as $\frac{1}{4}^{\text{th}}$) the figure comes to Rs.4,72,500/-. After giving credit to a sum of Rs.2,88,000/- awarded by the Tribunal, the balance is Rs.1,84,500/-. The Tribunal has awarded only a sum of Rs.10,000/- towards the loss of consortium. As per the law declared by the Supreme Court in *Rajesh v. Rajbir Singh* [2013 (3) KLT 89 (SC)], a sum of Rs.1,00,000/- is payable. But, the accident in the said case was in the year 2007. Considering the money value and such other circumstances prevailing on the date of accident herein, we fix the loss of consortium as Rs.50,000/- and as such a sum of Rs.40,000/- is to be effected as the balance payable. Similarly, it is to be noted that no amount has been granted by the Tribunal towards loss of love and affection. We find it appropriate to grant a sum of Rs.50,000/- under this head as well. The funeral expense has been compensated only to an extent of Rs.2,000/- which we enhance to Rs.10,000/-, thus, resulting in payment of a balance of Rs.8,000/-. The

total balance compensation comes to Rs.2,82,500/–, which shall carry interest @ 9% per annum from the date of filing the petition till the date of satisfaction. Since the policy is admitted, we direct the Insurance Company to effect the deposit within one month from the date of receipt of a copy of this judgment. The appeal stands allowed to the said extent.

Sd/–

P.R. RAMACHANDRA MENON, JUDGE

Sd/–

K. HARILAL, JUDGE

okb.