

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE P.BHAVADASAN**

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

MACA.No. 1760 of 2007 ()

**AGAINST THE AWARD IN OPMV 1396/2002 of MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THRISSUR DATED 17.10.2006**

APPELLANT(S)/APPELLANTS/PETITIONERS:

- 1. SARASWATHY AMMA,
W/O.LATE NARAYANA MENON, PANIKKAVEETIL HOUSE, KURUMAL
P.O.VELOOR, VIA VADAKKANCHERRY., PINCODE 680 601.**
- 2. P.VASANTHAKUMAR, S/O.SARASWATHY AMMA,
DO DO.**
- 3. P.VIJAYAKUMAR, S/O.SARASWATHY AMMA,
DO DO.**
- 4. P.SAJEEVKUMAR, S/O.SARASWATHY AMMA,
DO. DO.**
- 5. PANANTHKUMAR,S/O.SARASWATHY AMMA,
DO. DO.**
- 6. PANILKUMAR, S/O.SARASWATHY AMMA,
DO. DO.**

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENT(S)/RESPONDENTS:

- 1. K.V.JOHN, S/O.VARGHESE, KORATTY HOUSE,
P.O.THANGALLUR, THRISSUR DISTRICT.**
- 2. SUKUMARAN, S/O.KARAPPAN, KOLAMETH
HOUSE, PERAMANGALAM, P.O.PERAMANGALAM
THRISSUR DISTRICT.**
- 3. THE ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE: THRISSUR.**

**R1 BY ADV. SRI.FRANCIS JOSEPH KURISINKAL
R3 BY ADV. SRI.VPK.PANICKER**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.R. RAMACHANDRA MENON & P.BHAVADASAN, JJ.

M.A.C.A. No. 1760 of 2007

Dated this the 30th day of November, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

The claimants, who lost the husband of the first appellant and father of the appellants 2 to 6, are before this Court seek for enhancement of the compensation awarded in respect of death of the said person contending that only an abysmally low amount has been awarded by the Tribunal.

2. The accident occurred on 29.12.2001. The deceased was riding a scooter when he was knocked down by a tempo van owned driven and insured by the second respondent respondent before the Tribunal. As a matter of fact, the tempo van was coming from a pocket road and it was only because of the negligence on the part of the driver of the van that the accident was resulted. This was sought to be compensated by filing the claim petition before the Tribunal.

3. It was contended by the claimants that the deceased was originally serving the Indian Army and after retirement, he got re-employment as Assistant Postmaster. On attaining the age superannuation, he came out from the service and was having a private employment drawing a salary of ₹3,000/- per month in a software company as disclosed from Ext.A6. The deceased was also generating income by pension from both the streams i.e. from the Indian Army and also from the Postal Department. The total income in this regard is stated as ₹6,900/- per month.

4. The evidence adduced before the Tribunal consists of the oral testimony of PW1, who is the 5th appellant herein, and documents produced as Exts.A1 to A13. Based on the evidence adduced, the Tribunal held that the accident was only because of the negligence on the part of the driver of the tempo van.

5. The amounts awarded by the Tribunal under various heads are as given below:

1	Expense for transportation	-	1,000.00
2	Damage to clothing and articles	-	1,000.00
3	Expense for treatment	-	33,100.00
4	Expense for by-stander	-	200.00
5	Expense for funeral	-	5,000.00
6	Compensation for pain and suffering	-	20,000.00
7	" loss of consortium	-	10,000.00
8	" love and affection	-	10,000.00
9	loss of dependency	-	90,000.00
			1,70,300.00

The said amount is ordered to be satisfied with interest at the rate of 7% per annum from the date of petition i.e. 18.06.2002 which is sought to be enhanced by way of this appeal.

6. Heard the learned counsel for the appellants as well as the learned counsel appearing for the Insurance Company. The learned counsel appearing for the appellants points out that, despite proving the income from different sources based on Exts. A6, A7 and A8, the Tribunal has reckoned only notional figure of ₹2,250/- as the monthly income, absolutely without any rhyme or reason. The

learned counsel also placed reliance on the decision rendered by the Apex Court reported in **Vimal Kanwar v. Kishore Dan** (2013 (2) KLT 748) which holds that income obtainable by way of pension, family pension etc. is not liable to be deducted for fixing the multiplicand.

7. We find considerable force in the said submission. The multiplier adopted by the Tribunal based on the age of the deceased (68 years) is 'five'. The first appellant/the first claimant herself was more than 65 years at the time of accident and the other claimants are the five sons of the first claimant/first appellant. The amount awarded by the Tribunal towards loss of dependency requires to be modified by reckoning the monthly income as contended by the appellant. However, it has to be noted that the first appellant/first claimant alone could be deemed as the dependent and as such, only 50% of the monthly income could have been deemed as the contribution to the family whereas, the Tribunal has reckoned 2/3rd as contribution

deducting only 1/3rd towards the personal expenses. Reworking the compensation as above, the amount comes to ₹6,900/- x 12 x 50/100 x 5 = ₹ 2,07,000/-

8. After giving credit to the sum of ₹90,000/- awarded by the Tribunal, the balance comes to **₹ 1,17,000/-**.

9. The Tribunal has awarded only a sum of ₹5,000/- towards the funeral expenses. Considering the facts and circumstances prevailing as on the date of accident, we award a further compensation of ₹5,000/- under this head. Nothing has been awarded by the Tribunal towards loss of estate. We award notional amount of ₹5,000/- under this head as well. The loss of consortium satisfied to the first appellant/the first claimant is only to an extent of ₹10,000/-. We are aware of the decision rendered by the Supreme Court in **Rajesh and others v. Rajbir Singh and others** (2013 (3) KLT 89) that loss of consortium payable and the loss of love and affection are to be compensated at the rate of ₹1 lakh each. But the accident occurred in the said case

was in the year 2007 and the age of the parties were also different. A Division Bench of this Court had occasion to consider the matter with reference to the above decision and it has been held in **Valsamma v. Binu Jose** (2014 (1) KLT 10) that the compensation for loss of consortium as well as loss of love and affection have to be fixed also with reference to the age of the deceased and also the age of the claimants. In the instant case, the deceased was admittedly more than 68 years and the first claimant was more than 65 years. As such, the loss of consortium payable to the first appellant stands fixed as ₹50,000/-, we award a balance of ₹ **40,000/-** under this head.

10. Coming to the compensation for loss of love and affection, we find that all five sons; the claimants 2 to 6 before the Tribunal who are the appellants 2 to 6 before this Court, were all major persons having independent means of their livelihood. But it cannot be said that they are not entitled to have the loss of love and affection to be

compensated. We find it appropriate to grant a sum of ₹ 1 lakh under this head and after giving credit to the sum of ₹10,000/- awarded by the Tribunal, the balance comes to ₹**90,000/-**. The total balance compensation payable under all the relevant heads is ₹**2,57,000/-** which shall be satisfied with interest at the rate of 9% per annum from the date of petition. Since the policy is admitted, we direct the Insurance Company to deposit the said amount within one month.

The appeal stands disposed of accordingly.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge