

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

MACA.No. 1606 of 2013 ()

AGAINST THE AWARD IN OPMV 1350/2009 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, MANJERI DATED 10-12-2012

APPELLANTS/PETITIONER IN OPMV:

1. MOHAMMED AGED 49 YEARS
S/O. HYDRU, CHERYAKODAN HOUSE, KURUVA AMSOM
VATTALLOOR DESOM, P.O., VATTALLOOR
PERINTHALMANNA TALUK.
2. ARIFA AGED 44 YEARS
W/O. MOHAMMED, CHERYAKODAN HOUSE, KURUVA AMSOM
VATTALLOOR DESOM, P.O., VATTALLOOR
PERINTHALMANNA TALUK.
3. UMMUHANI AGED 23 YEARS
D/O. MOHAMMED, CHERYAKODAN HOUSE, KURUVA AMSOM
VATTALLOOR DESOM, P.O., VATTALLOOR
PERINTHALMANNA TALUK.
4. JASEEL ALI AGED 22 YEARS
S/O. MOHAMMED, CHERYAKODAN HOUSE, KURUVA AMSOM
VATTALLOOR DESOM, P.O., VATTALLOOR
PERINTHALMANNA TALUK.
5. TASREEFA AGED 20 YEARS
D/O. MOHAMMED, CHERYAKODAN HOUSE, KURUVA AMSOM
VATTALLOOR DESOM, P.O., VATTALLOOR
PERINTHALMANNA TALUK.

BY ADV. SRI.SIRAJ KAROLY

RESPONDENTS:

- * 1. DOMINIC
S/O. JOHN, MALIYEKKAL HOUSE, KODENCHERRY
THAMARASSERY
KOZHIKODE DISTRICT(DRIVER OF THE VEHICLE.)- (DELETED)
- * 2. RIJAS
S/O. ABOOBACKER, 1/89, BANNURKATTE HARADY
PUTTUR DK DISTRICT
KARNATAKA STATE (OWNER OF THE VEHICLE)-(DELETED)

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3. THE ORIENTAL INSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, JUYOTHI SUPER BAZAR
THODUPUZHA-685584.

(R1 & R2 ARE DELTED FROM THE PARTY ARRAY, AT THE RISK OF THE
APPELLANT AS PER ORDER DATED 27.3.2015 IN I.A. No. 1270/2015).

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

AL/-

**T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.,**

M.A.C.A. No.1606 of 2013

Dated this the 6th day of April 2015

JUDGMENT

Ramachandran Nair, J.,

The appellants are the parents and siblings of the deceased Sri. Badar Saman. The total compensation claimed is Rs. 6 lakh. He died in a road accident which occurred on 10.7.2009 at Mongam Hill top on the Kozhikode-Malappuram Higway..

2. He was riding a motor cycle and the accident occurred on a clash between the motor cycle and a lorry bearing registration No.K.A.21 A 2520. The Tribunal found that the deceased was also negligent and attributed 50% of the liability to the deceased and after fixing the compensation at Rs. 2,88,000/- and awarded compensation at Rs. 1,44,000/-.

3. Before the Tribunal, Exts.A1 to A7 and Exts. B1 to B3(a) were makred. PWs.1 & 2 were examined.

4. Learned counsel for the appellants submitted that the finding regarding negligence as against the deceased is not

correct. Our attention was invited to the scene mahazar. It show that at the spot of accident, the road was having 14 meters width and the exact accident spot was 6 meters from southern tar end and 8 meters from the northern tar end of the road. According to the learned counsel for the appellant the motor cycle was being driven through the proper side of the motorcyclist. It is also submitted that the evidence of PW2 will show that he had seen the accident and was driving behind the lorry and the lorry had tried to overtake an autorikshaw and then the accident occurred. It is also submitted that this part of the evidence was not challenged and he was not cross examined.

5. Learned counsel for the Insurance Company submitted that admittedly the road was having width of 14 meters; the lorry had not hit the motor cycle and actually motor cycle had hit the diesel tank of the lorry which will show that the rider of the motor cycle was negligent. It is submitted that the spot of accident being 6 meters from the southern tar end, the motor cycle had come to upto that point and the road at that spot has a curve and was inclined towards Calicut also.

6. Of course, PW2's evidence is there. But the Police charge

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is against the deceased. After assessing various aspects, including the fact that the motor cycle hit the diesel tank of the lorry, we are of the view that the findings entered by the Tribunal cannot be said to be wrong.

7. As far as the quantum of compensation is concerned, it was in evidence that he was in Gulf countries but his employment as a driver therein is sought to be supported by the passport alone and not by any employment certificate. Therefore, at present there is no record to prove his actual income. The Tribunal fixed a notional income at Rs. 3000/- per month. The accident occurred in the year 2009. His driving licence was marked in evidence as Ext.A6. According to us, it is reasonable to fix an amount of Rs. 6,000/- as a notional income for the purpose of calculation of compensation. He being a bachelor, 50% will have to be deducted for his personal expenses. The multiplier was chosen by taking the age of the mother and going by the judgment of the Apex Court in ***Sarala Verma v. Delhi Transport Corporation [(2010)(2) KLT 802]***, it will be based on the age of the deceased. Therefore the multiplier will be 18. The Tribunal has granted Rs. 10,000/- towards loss of love and

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affection which we enhance to Rs. 1 lakh. For funeral expenses, the tribunal has granted only Rs. 3,000/- which we enhance it to Rs. 25,000/-. We grant an amount of Rs. 5,000/- towards transportation expenses and Rs. 35,000/- towards loss of estate.

Accordingly, we modify the award as follows:

Sl. No.	Heads	Amt. Awarded	Amt.modified
1	Loss of dependency	270000	648000
2	Loss of love and affection	10000	100000
3	Loss of estate	5000	35000
4	Any other disability	3000	3000
5	Funeral expenses		25000
6	Transportation		5000
7	Pain and sufferings		10000
	Total	288000	826000

8. Thus the total compensation will be Rs. 8,26,000/-, out of which 50% will be shared by the appellants (i.e. Rs. 4,13,000/-). The Tribunal has granted interest at the rate of 9% p.a. We also grant interest at the same rate for the enhanced amount of compensation from the date of petition.

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9. The Insurance Company is directed to deposit the amount less the amount already deposited within a period of three months. The enhanced compensation will be shared equally by the appellants 1 and 2.

The appeal is allowed accordingly. The parties will bear their respective costs in the appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

Sd/-

**P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge