

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

MACA.No. 1864 of 2015 ()

AGAINST THE AWARD IN OPMV 1285/2011 of M.A.C.T., PERUMBAVOOR DATED 25-02-2015

APPELLANT(S)/PETITIONER:

1. NALINI AGED 68 YEARS
W/O. PARAMESHWARAN, KAPRAKKADAN HOUSE, ONAMPILLY
OKKAL PO, PIN-683 550

2. JOSHI AGED 48 YEARS
S/O. PARAMESWARAN, KAPRAKKADAN HOUSE, ONAMPILLY
OKKAL PO, PIN-683 550

3. BINDU AGED 45 YEARS
W/O. SHAJI, KUDIYIL HOUSE, ONAMPILLY
OKKAL PO, PIN-683 550

4. MIN AGED 44 YEARS
W/O. SURESH BABU, KAPRAKKADAN HOUSE, NEELESWARAM PO
PIN-683 548

BY ADVS.SRI.REJI GEORGE
SMT.ANUPAMA JOHNY

RESPONDENTS:

NEW INDIA INSURANCE CO. LTD.,
D.O. 2ND FLOOR, REMA PLAZA,
NEAR PARAMESHWARAN COIL,
S.S. COIL ROAD, THAMPANOOR, THIRUVANANTHAPURAM,
PIN 695 001

BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

ANIL K. NARENDRAN, JJ.

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M.A.C.A. No. 1864 of 2015

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Dated, this the 25th day of November, 2015

JUDGMENT

Anil K. Narendran, J.

Appellants are claimants in O.P.(M.V.) No. 1285 of 2011 on the files of the Motor Accidents Claims Tribunal, Perumbavoor, an application filed under Section 166 of the Motor Vehicles Act, claiming compensation on account of the death of one Parameswaran, who died in a motor accident occurred on 16.09.2011. A KSRTC bus bearing No. KL 15/8002 driven by the second respondent before the Tribunal and insured with the respondent herein hit the motorcycle ridden by Parameswaran, which resulted in fatal injuries. The claimants filed claim petition claiming a total compensation of Rs.10,00,000/- under different heads. Based on the materials on record, the Tribunal awarded a total compensation of Rs.4,47,050/- under different heads. The Tribunal found that the accident occurred due to the rash and negligent driving of the bus by its driver and the respondent herein being the insurer of the bus was held liable for payment of compensation to the legal heirs of the deceased. Dissatisfied with the quantum of compensation awarded by the

Tribunal, the appellants are before this Court in this appeal.

2. We heard the arguments of the learned counsel for the appellants.

3. At the time of the accident, the deceased was aged 67 years. Though it was contended that the deceased was having a monthly income of Rs.8,000/- as a vendor in sale of sacks, in the absence of any reliable materials, the Tribunal fixed the notional monthly income as Rs.4,000/-. After deducting 1/4th towards personal expenses and adopting multiplier '5', the Tribunal awarded a total compensation of Rs.1,80,000/- towards loss of dependency. The aforesaid amount awarded by the Tribunal, based on the materials on record, represents a just and reasonable compensation, which requires no interference in this appeal.

4. The Tribunal awarded a sum of Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection. In **Rajesh and Others Vs. Rajbir Singh and Others [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 Rs.25,000/- towards funeral expenses. In that view of the matter, Rs.25,000/- awarded by the Tribunal under the above head

represents a just and reasonable compensation, warranting no interference in this appeal. The Tribunal awarded a sum of Rs.1,00,000/- each under the heads loss of consortium and loss of love and affection. In **Rajesh's case** (supra) the Apex Court held that in appropriate cases, the Courts have to award at least Rs.1,00,000/- under the head loss of consortium. In that case deceased was aged only 33 years and his wife was still young. Even in that case, the Apex Court had awarded only Rs.1,00,000/- under the head loss of consortium.

5. After referring to the judgment of the Apex Court in **Rajesh's case** (supra), a Division Bench of this Court in **Mary and Others Vs. United Insurance Co. Ltd. and another [2014 (1) KLT 805]**, followed by the judgment in **Valsamma and another Vs. Binu Jose and Others [2014 (1) KLT 10]** held that the age of the deceased and the age of the wife are relevant factors while considering the question of compensation to be awarded for loss of consortium. In the case on hand, the deceased was aged 67 years and the 1st appellant who is his widow, was aged 64 years at the time of accident. The respondent insurer has not challenged the compensation of Rs.1,00,000/- awarded to the appellant under the head loss of consortium. At any rate, it cannot be contended that

M.A.C.A. No. 1864 of 2015

: 4 :

Rs.1,00,000/- awarded by the Tribunal under the head loss of consortium is on a lower side. Similarly, at the time of accident, the appellants 2 to 4, who are the children of the deceased were aged 43, 41 and 39 years respectively. Therefore, the compensation of Rs.1,00,000/- awarded by the Tribunal under the head loss of love and affection can not be termed inadequate, warranting interference of this Court.

6. The Compensation awarded towards transportation to hospital (Rs.5,000/-), treatment expenses (Rs.11,050/-), damage to clothing (Rs.1,000/-) and pain and sufferings (Rs.10,000/-) also represent a just and reasonable compensation, which also do not require any enhancement at the hands of this Court.

In the result, we find no reasons to interfere with the impugned Award. The appeal fails and it is dismissed accordingly.

Sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**ANIL K. NARENDRA,
JUDGE**

kmd /True copy/

P.A. to Judge