

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR  
&  
THE HONOURABLE SMT.JUSTICE P.V.ASHA**

**WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937**

**MACA.No. 1863 of 2013 ()**  
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**AGAINST THE AWARD IN OPMV 250/2010 of MOTOR ACCIDENT CLAIMS  
TRIBUNAL, PALA DATED 27-03-2013**

**APPELLANT/PETITIONERS:**  
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- 1. PARUKUTTYAMMA  
W/O.VELAYUDHAN ACHARI, KOZHIKKUNNEL HOUSE  
RAMAPURAM KARA, RAMAPURAM VILLAGE, KOTTAYAM DISTRICT.**
- 2. BEENA  
W/O.LATE RAJENDRAN, KOZHIKKUNNEL HOUSE, RAMAPURAM  
KARA, RAMAPURAM VILLAGE, KOTTAYAM DISTRICT.**
- 3. K.R.VISHAK  
S/O.LATE RAJENDRAN, KOZHIKKUNNEL HOUSE, RAMAPURAM  
KARA, RAMAPURAM VILLAGE, KOTTAYAM DISTRICT.**
- 4. VIPIN K.R. (MINOR)  
S/O.LATE RAJENDRAN, KOZHIKKUNNEL HOUSE, RAMAPURAM  
KARA, RAMAPURAM VILLAGE, KOTTAYAM DISTRICT  
REPRESENTED BY HIS MOTHER BEENA.**

**BY ADVS.SRI.THOMAS ABRAHAM (NILACKAPPILLIL)  
SRI.K.B.ARUNKUMAR**

**RESPONDENTS:**  
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- 1. GEORGEKUTTY K.V.  
S/O.GEROGE, KOMARATHUKUNNEL HOUSE, MOONILAVU  
KOTTAYAM DISTRICT-686 586.**
- 2. JOSEKUTTY  
S/O.THOMA, KOMARATHUKUNNEL HOUSE, PULIYANNOOR P.O.  
PALA, KOTTAYAM DISTRICT, PIN-686 573.**

**3. THE ORIENTIAL INSURANCE COMPANY LTD  
CHEERAMVELILI BUILDING, N.H.220, KANJIRAPALLY  
KOTTAYAM DISTRICT-686 507.**

**R3 BY ADV. SRI.A.R.GEORGE  
R1 BY ADV. SRIP.C.HARIDAS  
R BY SRI.GEORGE CHERIAN (THIRUVALLA)**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

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

.....  
**M.A.C.A. No.1863 of 2013**  
.....

Dated this the 25<sup>th</sup> day of March, 2015.

**J U D G M E N T**

**T.R.Ramachandran Nair**

The appellants herein are the legal representatives of the deceased, Sri Rajendran who died in an accident which occurred on 18-2-2010. The deceased was aged 43 years at the time of the accident, who was riding his motor cycle. The appellants are respectively the mother, wife and two minor children of the deceased.

2. The deceased was riding a motor cycle bearing Reg.No.KL-5/T-6447 from Ramapuram to Koothattukulam bhagom and it was hit by a car bearing No.Kl-35/A-8172 owned by the second respondent. Mr. Rajendran was thrown away from the vehicle and sustained serious head injuries. He was taken to Medical College Hospital,

Kottayam and he died on the same day at 3.pm.

3. The learned Counsel for the appellants submitted that the Tribunal arrived on the finding that the accident was due to the negligence of the deceased also (10%), on the ground that the deceased does not have any valid license. It is submitted that Ext.A8 will prove the existence of his driving license. But the license had expired before the date of the accident. It is submitted that the same is not the cause of the accident and as laid down the judgment of the Apex Court in **Sudhir Kumar Rana vs. Surinder singh (2008(3) KLT 322)**, no negligence can be attributed to the deceased.

4. With regard to the compensation awarded, it is submitted that the monthly income claimed at Rs.5,000/- is reasonable and PW3 was examined to support the earnings. It is also submitted that towards funeral expenses, the Tribunal has granted only an amount of Rs.5,000/-, for loss of estate an amount of Rs.5,000/-, an amount of Rs.15,000/- towards loss of consortium to the 2<sup>nd</sup> petitioner and for compensation for loss of love and

affection, Rs.15,000/-, which are also liable to be enhanced, going by the judgment in **Rajesh vs.Rajbir Singh (2013 (3) KLT 89)**

5. In **Sudhir Kumar Rana's case (2008 (3) KLT 322)**, the Apex Court held that mere non-possession of driving licence by itself is not enough to reach a finding of rashness and negligence in driving. It was also held that "if a person drives his vehicle without a license, he commits an offence. The same by itself, in our opinion, may not lead to a finding of negligence as regards the accident". In the light of the above, it can be seen that there was no allegation against him that he was driving the vehicle negligently. We do not agree with the view taken by the Tribunal that he was liable for contributory negligence at 10% for mere non-possession of license. Apart from the same, in the charge sheet marked as Ext.A5 the accused is the driver of the offending vehicle. Therefore, we vacate the said finding on issue No.1.

6. As far as monthly income of the deceased is concerned, Rs.5000/- claimed was reasonable. PW3's

evidence is to the effect that he was working under him as an agricultural labourer. The accident occurred in the year 2010. Therefore, even if Rs. 200/- per day is taken, and by reckoning 25 days labour, the same will be Rs.5000/-. Even during that period, for manual labourers the wages was more than the said amount in this State, which is a matter of common knowledge. In **Nagarajappa vs. Divisional Manager, Oriental Insurance Company Limited (2011 (13) SCC 326)**, the apex court had found that Rs. 4500/- claimed towards the wages of a labourer, for the year 2004-05 is reasonable. It was also held that even in the absence of documentary evidence, if the claim is not exorbitant, the same can be accepted by the Tribunal or by the courts. We are therefore of the view that Rs.5000/- claimed as monthly income in this case cannot be said to be exorbitant.

7. As far as, compensation for funeral expenses, compensation for loss of consortium, for loss of love and affection are concerned, going by the judgment in

**Rajesh's case** (supra), the claimants will be entitled for Rs.25,000/- and Rs.1 lakh each.

Therefore, we are recomputing the compensation in the following manner.

| PART I                                      | AMOUNT AWARDED BY THE TRIBUNAL | COMPENSATION REFIXED       |
|---------------------------------------------|--------------------------------|----------------------------|
| Transport to hospital                       | 2000                           | 2000                       |
| Damages to clothing                         | 500                            | 500                        |
| Extra nourishment                           | Not entitled                   | Not entitled               |
| Hospital expenses                           | N.A                            | N.A                        |
| Funeral expenses                            | 5000                           | 25000                      |
| Pain and suffering                          | 10000                          | 10000                      |
| Loss of estate                              | 5000                           | 30000                      |
| Loss of dependancy                          | 4,80,000                       | 560000<br>(5000x12x2/3x14) |
| Compensation for loss of love and affection | 15000                          | 1,00,000                   |
| Loss of consortium to the petitioner        | 15000                          | 1,00,000                   |
| Mental shock to petitioners 1,3 and 4       | Not entitled                   | Not entitled               |
| Loss of earnings                            | N.A                            | N.A                        |
| <b>TOTAL</b>                                | <b>5,32,500</b>                | <b>8,27,500</b>            |

(Rupees eight lakhs twenty seven thousand five hundred only)

Out of the total compensation allowed by this court, 50% will be shared by the appellant No.2 and the

remaining amount will be equally shared by appellant Nos. 3 and 4. We permit all the appellants to withdraw the amount. We also award 9% interest per annum for the enhancement of the compensation. The Insurance Company will deposit the modified amount, less any amount already deposited before the Tribunal, within a period of three months.

Appeal is allowed accordingly. There will be no order as to costs in the appeal.

**T.R.RAMACHANDRAN NAIR**  
**JUDGE**

**P.V. ASHA**  
**JUDGE**

smm





