

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA**

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

MACA.No. 2054 of 2015 ()

**AGAINST THE AWARD IN OPMV 61/2012 of ADDL. D.C. & SESSIONS COURT - IV,
PATHANAMTHITTA DATED 07-11-2014**

APPELLANT(S)/3RD RESPONDENT:

**THE ORIENTAL INSURANCE CO.LTD
METRO PALACE, GROUND FLOOR, OPP.NORTH RAILWAYSTATION
ERNAKULAM
REPRESENTED BY ITS DULYAUTHORIZED OFFICER.**

BY ADV. SRI.VPK.PANICKER

RESPONDENT(S)/PETITIONERS:

- 1. RAGHAVAN ACHARY.K.N
KOLLAM PARAMBIL HOUSE
NARANAMMOOZHY P.O.ATHIKAYAM VILLAGE, RANNY TALUK
PATHANAMTHITTA - 689 711.**
- 2. SARASAMMA K.R.
KOLLAMPARAMBIL HOUSE
NARANAMMOOZHY P.O.ATHIKAYAM VILLAGE, RANNY TALUK
PATHANAMTHITTA - 689 711.**
- 3. RAJANKUTTY K.R.
KOLLAMPARAMBIL HOUSE, NARANAMMOOZHY P.O.
ATHIKAYAM VILLAGE, RANNY TALUK
PATHANAMTHITTA - 689 711.**
- 4. RADHAMONY K.R.
KOLLAM PARAMBIL HOUSE, NARANAMMOOZY P.O.
ATHIKAYAM VILLAGE, RANNY TALUK
PATHANAMTHITTA - 689 711.**
- 5. VIJAYANKUTTY K.R.
KOLLAM PARAMBIL HOUSE
NARANAMMOOZHY P.O.ATHIKAYAM VILLAGE, RANNY TALUK
PATHANAMTHITTA - 689 711.**
- 6. AMMINIKUTTY K.R.
KOLLAM PARAMBIL HOUSE, NARANAMMOOZHY P.O.
ATHIKAYAM VILLAGE, RANNY TALUK
PATHANAMTHITTA - 689 711.**

7. SYAMALA K.S.
KOLLAM PARAMBIL HOUSE, NARANAMMOOZHY P.O.
ATHIKAYAM VILLAGE, RANNY TALUK
PATHANAMTHITTA - 689 711.

R1-R7 BY ADV. SRI.T.K.KOSHY
R1-R7 BY ADV. SRI.SABU I.KOSHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 24-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

avk

**P.R.RAMACHANDRA MENON
&
ANIL K.NARENDRA, JJ.**

M.A.C.A.No.2054 of 2015

Dated this the 24th day of November, 2015

JUDGMENT

ANIL K. NARENDRA, J.

This appeal is filed by the third respondent Insurer before the Motor Accidents Claims Tribunal, Pathanamthitta, challenging the quantum of compensation granted by the Tribunal in award dated 7.11.2014 in O.P.(MV).No.61 of 2012. The said claim petition was one filed by the respondents herein under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of the death of one Bharathiyamma, wife of the first respondent herein and mother of respondents 2 to 7. She died in a motor accident on 22.10.2011. While she was walking on the side of the public road, a bus bearing registration No.KL-A/E-2073 driven by the 1st respondent and owned by the 2nd respondent before the Tribunal came in a rash and negligent manner and hit her. She fell on the road and sustained fatal injuries. The Tribunal found that the accident occurred due to the rash and negligent driving of the bus by the driver and the appellant herein, being the insurer of the bus was held liable to compensate the legal heirs of the deceased. The Tribunal awarded a total compensation of Rs.4,42,000/- and directed the appellant insurer to deposit the said amount together with 9% interest. It is aggrieved by the quantum of compensation awarded

under different heads, the appellant insurer is before this Court in this appeal.

2. We heard the arguments of the learned counsel for the appellant insurer and also the learned counsel appearing for the respondents/claimants.

3. The pleadings and materials on record would show that the deceased was aged 73 years at the time of accident. The case put forward by the claimants was that the deceased was self-employed diary farmer with a monthly income of Rs.13,000/-. Since the claim regarding the monthly income of the deceased was not supported by any reliable materials, the Tribunal fixed the notional monthly income at Rs.5,000/-. Towards loss of dependency, the Tribunal awarded a sum of Rs.2,40,000/- taking the notional monthly income of Rs.5,000/- and deducting $1/5^{\text{th}}$ towards personal expenses of the deceased and applying the multiplier of 5. However, we find that the deduction that should have been made by the Tribunal should be $\frac{1}{2}$ of the income, since the 1st respondent, husband of the deceased was aged 78 years and respondents 2 to 7, her children were aged 38 to 55 years, and as such they could not be treated as dependents of the deceased. In that view of the matter, the amount of compensation payable towards loss of dependency has to be re-fixed as Rs.1,50,000/- ($5000 \times 12 \times \frac{1}{2} \times 5$), instead of Rs.2,00,000/- awarded by the Tribunal.

4. Towards loss of love and affection, the Tribunal awarded a sum of Rs.60,000/-. Respondents 2 to 7 are the children of the

deceased who lost the support and guidance of their mother. Considering the facts and circumstance of the case, we find it appropriate to re-fix the compensation under the aforesaid head as Rs.90,000/-. Therefore, under the head loss of love and affection, they will be entitled for an additional compensation of Rs.30,000/-.

5. The Tribunal awarded a sum of Rs.10,000/- towards pain and suffering, Rs.25,000/- towards funeral expenses, Rs.1,000/- towards transportation to hospital, Rs.5,000/- towards loss of estate and Rs.1,000/- towards damage to cloth. The compensation awarded by the Tribunal under the above heads represents a just and reasonable compensation which requires no interference at the hands of this Court.

6. Towards loss of consortium, the Tribunal granted a sum of Rs.1,00,000/-. In *Rajesh and another V. Rajbir Singh and others* (2013 (3)KLT 89), the Apex Court held that in appropriate cases, the courts have to award at least Rs.1,00,00/- towards compensation for loss of consortium. In that case, the 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. After referring to the judgment of the Apex Court in *Rajesh's Case* (Supra) a Division Bench of this Court in *Mary and Others V. United Insurance Co.Ltd and another* (2014 (1) KLJ 805), followed by the judgment in *Valsamma and another V. 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 73 years and her husband, the 1st respondent herein was aged 78 years. In that view of the matter, the compensation of Rs.1,00,000/- was awarded by the Tribunal towards loss of consortium is on a higher side. Considering the facts and circumstances of the case, we re-fix the compensation towards loss of consortium at Rs.60,000/-.

6. In the result, the award passed by the Tribunal is modified to the extent of refixing the total compensation as Rs.3,42,000/- together with interest at the rate of 9% from the date of petition till realization as ordered by the Tribunal. Since the insurance coverage of the vehicle involved in the accident is not in dispute, the appellant insurer shall deposit the compensation amount together with interest before the Tribunal within a period of one month from the date of receipt of a certified copy of this judgment.

The appeal is disposed of as above.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Sd/-
ANIL K.NARENDRA
JUDGE

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PA TO JUDGE