

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

MACA.No. 1935 of 2013 ()

AGAINST THE AWARD IN OPMV 437/2007 of MACT,KALPETTA DT.29.10.2011
APPELLANT(S)/PETITIONERS:

1. MALLIKA AGED 39 YEARS
W/O. LATE CHINNASWAMI, PADINHAREVAYAL VEEDU, ANDOOR
VADUVANCHAL POST, WAYANAD DISTRICT.

2. MAHENDRAN AGED 21 YEARS
S/O. LATE CHINNASWAMI, PADINHAREVAYAL VEEDU, ANDOOR
VADUVANCHAL POST, WAYANAD DISTRICT.

3. NAGENDRAN AGED 20 YEARS
S/O. LATE CHINNASWAMI, PADINHAREVAYAL VEEDU, ANDOOR
VADUVANCHAL POST, WAYANAD DISTRICT.

BY ADVS.SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS

RESPONDENT(S) :

1. RAJEEVAN.P.,
S/O. SANKARAN PAYKATT HOUSE, MEMUNDA.P.O., VADAKARA
(DRIVER OF KL-18-C-3015 PICK UP VAN) PIN-673104.

2. K. LAKSHMANAN
S/O. KANNAN, KUNYIL HOUSE, MEPPAYIL.P.O.
VADAKARA
CCALICUT(OWNER OF KL-18-C 3015 PICK UP VAN) PIN-673104.

3. ICICI LOMBARD GENERAL INSURANCE CO. LTD.
CALICUT BRANCH
CALICUT.P.O.. (INSURER OF KL-18-C 3015 PICK
UP VAN) PIN-673104.

R3 BY ADV. SRI.R.AJITH KUMAR (128/84)
R2 BY ADV. SRI.P.R.SREEJITH
R2 BY ADV. SRI.M.PROMODH KUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

MACA No.1935 of 2013

Dated this the 26th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimants aggrieved by the inadequacy of compensation awarded by the Tribunal. They are the widow and two sons of late Shri Chinnaswami. The Tribunal, as per the award, has granted an amount of Rs.3,48,900/- as total compensation. On the ground that the Police charge has not been produced before the Tribunal, the liability was apportioned as 50 : 50 between the two vehicles and the claimants were granted an amount of Rs.1,74,450/- with interest.

2. Learned counsel for the appellants submitted that before the Tribunal I.A. No.2300/2008 was filed under Section 140 of the Motor Vehicles Act. The claimants were under the impression that evidence is being adduced in the said application and therefore a review was sought which was also dismissed as per Annexure A1 order. It is

therefore submitted that the adverse inference taken by the Tribunal for not producing the Police charge is not correct.

3. Learned counsel for the insurance company submitted that it is clear from the order passed in the review petition that evidence was being adduced in the main petition itself.

4. Now that the certified copy of the charge has been produced before this Court along with I.A. No.2694/2014, the said question has become academic. Going by Annexure A2 charge issued in Crime No.266/2007 of the Judicial First Class Magistrate Court-I, Sulthan Bathery, the driver of the offending vehicle is the accused which thus has proved negligence, which aspect is clear from the decisions of the Apex Court and this Court on the evidentiary value and relevance of Police charge. Therefore, we are of the view that as far as the aspect of negligence is concerned, there is real proof in the matter, as against the driver of the offending vehicle. Therefore, we proceed to consider the other contentions.

5. Learned counsel for the appellants submitted that the deceased was a coolie worker aged 43 and earning a sum of Rs.4,500/- per

month. But the Tribunal has fixed the monthly income only at Rs.2,500/-. Learned counsel for the insurance company submitted that there was no reliable evidence before the Tribunal and therefore, the / tribunal had fixed a notional income. The accident is in the year 2007. Since he was a coolie worker, the amount claimed as monthly income cannot be said to be exorbitant. In the light of the decision of the Apex Court in **Ramachandrappa v. Royal Sundaram Alliance Ltd.** {(2011 (13) SCC 236), in cases where the claim is not exorbitant, the Tribunal and this Court can consider the sufficiency of the amount claimed by the claimant. Therein also, the injured was a coolie worker and the accident occurred during the year 2004-2005, wherein the Apex Court accepted the monthly income at Rs.4,500/-. Therefore, we find no reason to reject the contention of the appellants and for the purpose of fixing compensation, we take Rs.4,500/- as the monthly income of the deceased. The multiplier will be only 14, whereas the Tribunal has taken it as 15. The Tribunal has granted Rs.3,000/- for funeral expenses, Rs.40,000/- for loss of love and affection and no amount has been granted towards loss of consortium and loss of estate. According

to the learned counsel for the appellants, amounts should have been awarded for mental shock and agony of the claimants, loss of care and guidance of minor children and compensation for pain and suffering as well as future prospects. Since the deceased was working in an unorganised sector and the claim for future prospects having not been established, we will be justified in fixing the monthly income at Rs.4,500/-.

6. For pain and suffering, we grant an amount of Rs.10,000/- and the compensation on other heads are recomputed in the following manner:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Transport to hospital	1000	1000
Funeral expenses	3000	25000
Bystander's expenses	1000	-
Loss of love and affection	40000	100000
Medical expenses	3900	3900
Loss of consortium		100000
Loss of dependency	300000	504000 (4500 x 12 x 14 x 2/3)
Loss of estate		20000
Pain and suffering		10000
Total		763900

(Rupees Seven lakhs sixty-three thousand and nine hundred only)

We grant interest at 9% for the enhanced amount of compensation.

There will be a direction to the insurance company to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months. The first appellant will be allowed to withdraw 50% of the award amount and the remaining amount will be shared equally by appellants 2 and 3.

The appeal is allowed as above. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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