

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

MACA.No. 1962 of 2013 ()

AGAINST THE AWARD IN OPMV 336/2008 of MACT PALA DATED 04-03-2010

APPELLANT(S)/PETITIONER:

MANOHARAN

S/O.S.SAMUEL, AMERICAN MISSION KOVIL THERUVU

KOTTAIMEDU VADAKARAI, THENI, TAMILNADU

NOW RESIDING AT POOVATHANIYIL HOUSE, POOVARANY P.O.

POOVARANY VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT(S)/RESPONDENTS:

1. SIVAN

S/O.KURUMBAN, CHIRANDALAKUDI HOUSE

VARAMBUVAYALIL PADI BHAGOM, KEEZHILLAM KARA

PULLUKUZHIL VILLAGE, ERNAKULAM

PIN 683541. **[DELETED]**

[RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AS PER ORDER DATED 01.09.2015
IN IA 2324/15.]

2. THE MANAGING DIRECTOR

KSRTC, THIRUVANANTHAPURAM, PIN 695001.

R2 BY SRI.M.GOPIKRISHNAN NAMBIAR

BY SRI.SREEPRAKASH K.NAIR, SC, KSRTC

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 1962 of 2013

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Dated, this the 9th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation awarded by the Tribunal in respect of the death of son of the appellant in a road traffic accident is the subject matter of this appeal.

2. The accident was occurred on 12.01.2008. The deceased was travelling in a KSRTC bus bearing No. **KL15 6488** owned by the second respondent Corporation. While so, because of the rash and negligent driving on the part of the driver of the bus, it overturned at 4.30 a.m. causing serious injuries to the deceased, who succumbed to the same at about 10.45 am on the same day. This was sought to be compensated by filing the claim petition by father of the deceased, who is stated as the sole dependent, as put forward by the learned counsel for the appellant. The first respondent/driver of the vehicle chose to remain exparte and the matter was contested only by the second respondent. The evidence adduced before the Tribunal

consists of documents produced as Exts. A1 To A6 from the part of the appellant. No oral evidence was adduced from either side. After conclusion of the trial, the Tribunal arrived at a finding that the accident was occurred only because of the negligence on the part of the driver of the bus and proceeded to work out the compensation accordingly.

3. The claim of the appellant was that the deceased was a general worker, aged 28 years at the time of the accident, and that he was earning a sum of Rs.6000/- per month. But the appellant did not choose to mount the box. In the said circumstances, the Tribunal took a notional income of Rs.4000/- p.m. to fix the compensation. Based on the age of the claimant, multiplier of '11' was adopted. The amounts awarded by the Tribunal under various heads are as follows :

Loss of dependency	:	Rs.1,98,000/-
Transportation to hospital	:	Rs. 3,000/-
Damages to clothing	:	Rs. 500/-
Funeral expense	:	Rs. 5,000/-
Pain and sufferings	:	Rs. 5,000/-
Loss of love and affection	:	Rs. 5,000/-

Loss of Estate : Rs. 5,000/-

Total : Rs.2,21,500/-

The compensation as above awarded by the Tribunal was directed to be satisfied with interest @ 7.5 % p.a., which is sought to be enhanced by filing this appeal.

4. Heard the learned counsel for the appellant as well as the learned standing counsel appearing for the respondent KSRTC.

5. It is true that no oral or documentary evidence was adduced from the part of the claimant as to the avocation of the deceased or his income. But considering the fact that the accident was in the year 2008; that deceased was an able bodied youth of 28 years at that time, and considering the general economic affairs as on the date of accident, this Court finds it fit and proper to reckon Rs.3500/- as the monthly income so as to make the award a 'just' one as envisaged under Section 168 of the M.V. Act. Similarly, the proper multiplier to be adopted in the light of the law declared by the Apex Court in **Sarla Varma Vs. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, which has been affirmed in **Reshma Kumari and Ors. Vs. Madan Mohan and another [2013 (2) KLT 304 (SC)]**, was '17' instead of '16'. On

reworking the compensation as above, loss of dependency will come to Rs.3,57,000/- [3500 x 12 x 17 x ½]. After giving credit to Rs.1,98,000/- already granted by the Tribunal, the balance compensation under this head will come to **Rs.1,59,000/-**. The Tribunal has awarded only Rs. 5000/- towards the funeral expenses. As per the law declared by the Apex Court in **Rajesh Vs. Rajbir Singh [2013 (3) KLT 89 (SC)]**, the funeral expenses have to be compensated to an extent of Rs.25000/-. In the said circumstances, we grant a further sum of **Rs.20,000/-** under this head. The Tribunal has granted only a sum of Rs.5000/- towards loss of love and affection. Considering the age of the claimant, we find it fit and proper to grant a sum of **Rs.45,000/-** more under this head. Accordingly, the total balance/additional compensation to be paid to the appellant will come to **Rs.2,24,000/- [Rupees Two lakhs Twenty Four thousand only]**, which requires to be satisfied with interest @ 9% p.a. from the date of filing the petition. However, it is to be noted that there was serious lapse on the part of the appellant in approaching this Court and there was '1208 days' of delay in filing the appeal itself, followed subsequent lapses in completing service of notice as well. Delay

was condoned as per order dated 01.09.2015 making it clear that, if for any reason the appellant succeeded in appeal, he would not be entitled to get interest for the period from the date of expiry of statutory period for filing the appeal u/s 173 of the Act, till the date of filing the appeal. In the said circumstances, it is made clear that, no interest shall be paid for the aforesaid period. The second respondent KSRTC is directed to effect the deposit before the Tribunal, at the earliest, at any rate, within two months from the date of receipt of a copy of this judgment.

The appeal stands disposed of.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
K. HARILAL,
JUDGE

kmd

/True copy/

P.A. to Judge