

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

MACA.No. 1967 of 2013 ()

**AGAINST THE AWARD IN OPMV 1301/2004 of M.A.C.T.,ATTINGAL
DATED 02-04-2012**

APPELLANT/CLAIMANT:

- 1. E.V.JOSE, AGED 66 YEARS
S/O.LATE VARKEY, ERINGOLIL HOUSE, VAZHAKULAM P.O.
MUVATTUPUZHA, ERNAKULAM DISTRICT.**
- 2. THRESIAMMA JOSE, AGED 63 YEARS
W/O.JOSE, ERINGOLIL HOUSE, VAZHAKULAM P.O.
MUVATTUPUZHA, ERNAKULAM DISTRICT.**
- 3. BIJUMON JOSE, AGED 38 YEARS
ERINGOLIL HOUSE, VAZHAKULAM P.O., MUVATTUPUZHA
ERNAKULAM DISTRICT.**
- 4. SHIJU, AGED 34 YEARS
S/O.JOSE, ERINGOLIL HOUSE, VAZHAKULAM P.O.
MUVATTUPUZHA, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.ALEXANDER JOSEPH
SRI.P.M.SANEER**

RESPONDENTS/RESPONDENTS:

- 1. RADHAKRISHNAN.V
CHARINGAMKONAM, ATTARIKATH PUTHENVEEDU, MYLAKARA
KALLIKKADU P.O., THIRUVANANTHAPURAM 69508.**
- 2. THE MANAGER
NEW INDIA ASSURANCE CO.LTD, BRANCH OFFICE, ATTINGAL
THIRUVANANTHAPURAM -69506.**

**R2 BY ADV. SRI.N.S.MOHAMMED USMAN
R BY SRI.A.A.ZIYAD RAHMAN**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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

M.A.C.A.No.1967 OF 2013

Dated this the 28th day of January, 2015

J U D G M E N T

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**T.R.Ramachandran Nair, J.**

This appeal is filed by the parents and brothers of late Sri.Jomon Jose, who died in a motor vehicle accident on 8.4.2010 at 9.30 p.m. at Thycaud - Vazhuthacaud road in Trivandrum city. He was riding a motor cycle bearing Reg. No.KL-01/P-1996. The accident occurred near Kalabhavan Theatre at Vazhuthacaud and the offending vehicle is a Jeep bearing Reg. No.KL-01/B-9014. The deceased succumbed to death on the same day, after he was taken to the Medical College hospital, Trivandrum.

2. He was aged 33 years and was unmarried. He was employed as Assistant Sub Inspector of Police in Kerala Government service.

3. The total compensation claimed is Rs. 20 lakhs and what is awarded by the Tribunal is Rs.7,46,400/- and from out of which, 30% was deducted by finding negligence on the part of the deceased also.

4. The learned counsel for the appellant submitted that the finding on contributory negligence is totally without any evidence. The Tribunal's opinion that the deceased might have consumed alcohol is without any evidence and is not even supported by Ext.A5 postmortem certificate. It is, therefore, submitted that the assumption by the Tribunal that the deceased was riding a motor cycle after consumption of liquor cannot be supported. It is also submitted that the award of compensation under the various heads is also not properly done. No amount is awarded towards pain and suffering and Rs.5,000/- alone is awarded towards medical and funeral expenses. The body of the deceased was taken from Thiruvananthapuram to Muvattupuzha for cremation. Rs.3,000/- alone is granted towards transportation expenses. It is also submitted that as compensation for love and affection and mental pain and shock

of the applicants Rs.25,000/- alone was awarded and for loss of estate also Rs.10,000/- alone was granted.

5. We heard the learned counsel for the Insurance company, who supported the award.

6. The deceased was working as Additional Sub Inspector of Police attached to the Special Armed Forces. The postmortem was performed on 19.4.2014. He had multiple fractures including injuries to his head and chest. Ext.A1 is the copy of the FIR in Crime No.715/2004 and Ext.A2 is the scene mahazar.

7. Going by the discussion in paragraph 6, the Tribunal after noticing that the road was wide enough, namely, 14.70 meters, presumed further that the accident was unlikely to have occurred unless the drivers of both the vehicles were grossly negligent in driving their respective vehicles; or that, either or both of them had consumed alcohol and remained under its influence. The time of accident was 9.30 p.m., and the

contention of the respondent before the Tribunal was that the deceased was found to have consumed alcohol. The Tribunal accepted the contention as true as the contents of the stomach were smelling sour. Accordingly, it is found that it can undoubtedly be on account of his having consumed alcohol before setting out to ride the motor cycle.

8. As rightly pointed out by the learned counsel for the appellant, these assumptions are not supported by any valid evidence. According to the learned counsel for the respondents, the fact that in the postmortem report it is stated that the contents of the stomach smells sour can only lead to the conclusion that he had consumed alcohol. The respondents have not summoned the Doctor, who has conducted the postmortem, to explain anything. No evidence was adduced by the insurer to support their plea that the deceased had consumed liquor and was under the influence of alcohol. In the absence of any attempt to summon the Doctor and to atleast make suggestions regarding the contention that he had consumed alcohol, the broad contention raised could not have been accepted by the

Tribunal. The Tribunal also, jumped into the conclusion that he was under the influence of alcohol, plainly without any supporting evidence for the same. Any such finding could have been entered on proved facts and evidence. This being absent, the assumption by the Tribunal that he had ridden the motor cycle after consuming liquor falls to the ground and the further finding that he is found to have contributed to the accident to an extent of 30% is also unjustified. Therefore, we vacate the same.

9. The next aspect is regarding the quantum of compensation. The evidence available before the Tribunal shows that he was earning a salary of Rs.7,100/- exclusive of service allowances at the time of his death and Ext.A9 was produced for supporting the same. After accepting the said evidence and after adding amounts towards future prospects, the monthly income was found to be Rs.10,650/-. The multiplier adopted is 11. Going by the judgment of the Apex Court in **Sarala Verma v. Delhi Transport Corporation** [2010(2) KLT 802], the correct multiplier will be 16. As far as transportation expense for taking

the body to the residence is concerned, we grant a further amount of Rs.5,000/- considering the distance from Trivandrum to Muvattupuzha. Therefore, the total amount will be Rs.8,000/-. In column No.5, towards medical and funeral expenses Rs.5,000/- is granted and in the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh** [2013(3) KLT 89], the claimants are entitled to Rs.25,000/- towards funeral expenses. As far as compensation for love and affection and mental pain and shock of the applicants is concerned, what is granted by Tribunal is Rs.25,000/- and going by the same judgment in **Rajesh's** case (supra) Rs. One lakh is granted. As far as loss of estate is concerned, what is awarded by the Tribunal is Rs.10,000/-. Since the deceased was having a permanent job and was earning salary we will be justified in granting an amount of Rs.30,000/- towards loss of estate.

10. The Tribunal has deducted Rs.50% for loss of dependency since he is a bachelor. As compensation for pain and suffering nothing has not been granted by the Tribunal. He had sustained very serious injuries including injuries to chest and head. We grant an amount of Rs.10,000/- towards pain and

suffering also. Accordingly, we recompute the compensation in the following manner.

| <i>Head</i>                                                                                                                                                                                                                                                     | <i>Amount Claimed</i> | <i>Amount awarded by the Tribunal</i> | <i>Amount modified</i> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|---------------------------------------|------------------------|
| Loss of earning                                                                                                                                                                                                                                                 | Nil                   | Nil                                   |                        |
| Partial loss of earnings                                                                                                                                                                                                                                        | Nil                   | Nil                                   |                        |
| Transportation expenses                                                                                                                                                                                                                                         | 25,000/-              | 3,000/-                               | 8,000/-                |
| Extra nourishment                                                                                                                                                                                                                                               | Nil                   | Nil                                   | -                      |
| Medical and funeral expenses                                                                                                                                                                                                                                    | 10,000/-              | 5,000/-                               | 25,000/-               |
| Damage to clothing, etc.                                                                                                                                                                                                                                        | 1,000/-               | 500/-                                 | 500/-                  |
| Compensation for pain and suffering                                                                                                                                                                                                                             | 30,000/-              | Nil                                   | 10,000/-               |
| Compensation for continuing or permanent disability if any, compensation for the loss of earning power and suffering of the applicants and shortening of life, compensation for love and affection, loss of consortium, mental pain and shock of the applicants | 17,00,000/-           | 25,000/-                              | 1,00,000/-             |
| Compensation for loss of dependency                                                                                                                                                                                                                             | -do-                  | 7,02,900/-                            | 10,22,400/-            |
| Compensation for loss of estate                                                                                                                                                                                                                                 | 3,00,000/-            | 10,000/-                              | 30,000/-               |
| <b>Total</b>                                                                                                                                                                                                                                                    |                       | <b>7,46,400/-</b>                     | <b>11,95,900/-</b>     |

**(Rupees Eleven lakhs ninety five thousand nine hundred only)**

It will carry interest at the rate of 9% per annum from the date of petition. The Insurance Company will deposit the award amount, less any amount already deposited as per the award impugned, within three months.

Appeal is allowed as above. No costs.

**SD/-**  
**T.R.RAMACHANDRAN NAIR,**  
**JUDGE.**

**SD/-**  
**P.V.ASHA, JUDGE.**

Ps/31/1/15

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PA to Judge