

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

MACA.No. 1626 of 2011

AGAINST THE AWARD IN OPMV 1597/2010 of M.A.C.T.,KOZHIKODE DATED 25-07-2011
APPELLANTS/PETITIONERS IN OP(MV):

1. BEEVI,
S/O LATE MOOSSA, RESIDING AT CHETHIL HOUSE
EDAKKARA AMSOM DESOM , PO EDAKKARA (VIA), CHELANNUR
KOZHIKKODE DISTRICT.
2. SALEENA,
D/O LATE MOOSA, RESIDING AT CHETHIL HOUSE
EDAKKARA AMSOM DESOM, PO EDAKKARA (VIA), CHELANNUR
KOZHIKKODE DISTRICT.
3. RASEENA, D/O LATE MOOSSA,
RESIDING AT CHETHIL HOUSE, EDAKKARA AMSOM DESOM
PO EDAKKARA, (VIA)CHELANNUR, KOZHIKKODE DISTRICT.

BY ADVS.SRI.AVM.SALAHUDIN
SMT.P.Y.SHEHEERA

RESPONDENT(S)/RESPONDENTS IN OP(MV):

1. ABDURAHIMAN,
S/O KUNHIRAYIN, KUNIYIL HOUSE, P.C.PALAM
P.O, NARIKKUNI, KUZHIKKODE-673585.
2. VIPINLAL K.
S/O VELAYUDHAN K, ODAKKAL HOUSE, POKAKKUR
KOZHIKKODE-673 619.
3. ICICI LOMBARD GENERAL INSURANCE COMPANY
LIMITED, 6/255/C, 2ND FLOOR
CITY PLAZA BUILDING, YMCA CROSS ROAD, KOZHIKODE-
673 001.
4. RIYAS,
S/O LATE MOOSSA, RESIDING AT CHETHIL HOUSE
EDAKKARA MASOM DESOM, PO EDUAKKARA (VIA), CHELANNUR
KOZHIKKODE DISTRICT-673 619.

R-3 BY ADV. SRI.K.B.RAMANAND
R-3 BY ADV. SRI.R.AJITH KUMAR (128/84)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
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M.A.C.A.No.1626 of 2011
= = = = =
Dated this the 21st day of July, 2015

JUDGMENT

Ravindran, J.

The appellants are the claimants in O.P.(MV).No.1597 of 2010 on the file of the Motor Accidents Claims Tribunal, Kozhikode. They are the wife and two daughters of late Moosa, aged 54 years who sustained fatal injuries in a motor accident that took place at about 12.30 pm on 01.08.2010. Respondents 1 and 2 are the owner and driver and the third respondent is the insurer of a stage carriage bus bearing registration No.KL-06-C-2162. The fourth respondent is the son of the victim in the accident. The claimants had in the claim petition alleged that while the deceased was riding his motor bike from Kakkoor to his house, he was knocked down by the stage carriage bus driven by the second respondent in a rash and negligent manner. In that accident, he sustained serious injuries and while undergoing treatment in Medical College Hospital, Kozhikode, he succumbed to the injuries sustained by him on 05.08.2010. The appellants contended that the accident took place on account of the rash and negligent driving of the stage carriage bus by its driver.

2. Though notice was served, the owner of the bus did not enter appearance before the Tribunal or file a written statement, with the

result, he was set ex parte. The second respondent entered appearance and filed a written statement contending that the motor accident was not on account of his negligence, but on account of the negligence of the victim of the accident. He contended that he possessed a valid driving licence on the date of the accident and that the motor vehicle driven by him was covered by a valid policy of insurance issued by the third respondent. The third respondent entered appearance and filed a written statement admitting the existence of a valid policy of insurance but denying the allegation that the accident took place on account of rash and negligent driving of the second respondent. It disputed the age, income and occupation of the deceased and contended that the victim of the accident had no valid driving licence.

3. Before the Motor Accidents Claims Tribunal, no oral evidence was adduced on either side. Ext.A1 FIR, Ext.A2 postmortem report, Ext.A3 Family Membership Certificate and Ext.A4 Certificate cum policy schedule were produced by the claimants. The Motor Accidents Claims Tribunal, after considering the rival contentions held relying on the police records that the accident took place on account of the negligence of the driver of the bus, namely, the second respondent and proceeded to award Rs.2,90,500/- as compensation to the

claimants. It directed the third respondent insurer to deposit the said amount together with interest at 7% per annum from 22.10.2010 till the date of deposit as well as the sum of Rs.1,200/- towards costs. The claimants have, dissatisfied with the quantum of compensation awarded by the Tribunal filed this appeal.

4. We heard Smt.Divya A.D, learned counsel appearing for the appellants and Sri.K.B.Ramanand, learned counsel appearing for the third respondent. We have also gone through the pleadings and the materials on record. The first claimant/appellant is the wife of the victim of the accident and claimants/appellants 2 and 3 are his daughters who were unmarried on the date of the accident. The fourth respondent is the son of the victim of the accident. The first claimant was aged 49 years on the date of the accident. The Motor Accidents Claims Tribunal awarded the sum of Rs.5,000/- as compensation under the head loss of consortium. The Apex Court has in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 (SC), held that it will only be just and reasonable to award at least the sum of Rs.1,00,000/- as compensation under the head loss of consortium. In the light of the binding decision of the Apex Court, we award to the first appellant/first claimant an additional sum of Rs.95,000/- as compensation under the head loss of consortium. The Motor Accidents Claims Tribunal has

awarded only the sum of Rs.3,000/- towards funeral expenses. The Apex Court has in **Rajesh v. Rajbir Singh** (supra) held that in the absence of evidence to the contrary, at least the sum of Rs.25,000/- has to be awarded towards funeral expenses. We accordingly award a further sum of Rs.22,000/- under the head funeral expenses. As stated earlier, claimants 2 and 3 were unmarried on the date of the accident. The Motor Accidents Claims Tribunal has awarded the sum of Rs.5,000/- only towards compensation for loss of love and affection. Having regard to the fact that respondents 2 and 3 were not married on the date of the accident, we are of the opinion that a minimum amount of Rs.50,000/- has to be awarded to them under the head loss of love and affection. Consequently, we award an additional amount of Rs.45,000/- under the head love and affection to appellants 2 and 3 who were unmarried at the date of the accident.

5. Ext.A2 postmortem report discloses that the deceased had suffered fracture of facial structure and fracture of ribs and other multiple fractures to his body. The accident took place at 12 noon of 01.08.2010. The victim died five days later on 05.08.2010. He would have suffered considerable pain. The compensation of Rs.10,000/- awarded under the head pain and suffering is meagre and inadequate. We accordingly enhance the compensation under the head pain and

suffering to Rs.25,000/-. The appellants will be entitled to a further amount of Rs.15,000/- under that head.

6. The impugned award discloses that the Motor Accidents Claims Tribunal has awarded compensation under the head loss of dependency taking the monthly income of the deceased as Rs.3,500/-. After deducting one-third of the income towards personal expenses and applying the multiplier of 9, an amount of Rs.2,52,000/- was arrived at as compensation for loss of dependancy. Though the claimants had in the claim petition averred that the deceased was working in Panama Soap Works, Kakkodi, earning Rs.8,000/- per month, no evidence had been produced to prove his avocation or his income. However, the fact remains that the deceased owned a motor bike and was also taking care of his wife and two unmarried daughters. Having regard to the state of affairs that prevailed at the relevant time, we are of the opinion that on a modest estimate the monthly income of the deceased could be taken as Rs.4,500/-. as otherwise he would not have been in a position to look after his wife and two children and also own a motor bike. We are therefore of the considered opinion that the loss of dependancy should be calculated taking the monthly income of the deceased as Rs.4500/-. Computed on that basis, the loss of dependancy will be $\text{Rs.4500} \times 12 \times 9 \times \frac{2}{3} =$

Rs.3,24,000/- . The Tribunal has by the impugned award awarded only the sum of Rs.2,52,000/- as compensation under that head. The claimants will accordingly be entitled to receive a further sum of Rs.72,000/- as compensation under the head loss of dependency. The compensation awarded under the other heads does not, in our opinion, merit any enhancement.

We accordingly award to the appellants/claimants an additional total compensation of Rs.2,49,000/- under the heads aforesaid. The third respondent insurer shall deposit the said amount together with interest @ 9% per annum from the date of petition till the date of deposit before the Motor Accidents Claims Tribunal, Kozhikode within two months from today. Upon such deposit being made, the sum of Rs.95,000/- and the interest thereon shall be disbursed to the first appellant/claimant and the balance amount shall be disbursed to appellants 1 and 2 equally. The parties shall suffer costs in this appeal.

P.N.Ravindran,Judge

Anu Sivaraman, Judge