

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 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

MACA.No. 2450 of 2015 ()

AGAINST THE AWARD IN OPMV 1565/2007 of MOTOR ACCIDENTS CLAIMS
TRIBUNAL, PATHANAMTHITTA DATED 11-06-2014

APPELLANT/2ND RESPONDENT IN OP(MV) No. 1565/07:

NATIONAL INSURANCE COMPANY LTD.
PATHANAMTHITTA. REPRESENTED BY ITS MANAGER
REGIONAL OFFICE, M.G. ROAD, ERNAKULAM.

BY ADVS. SRI. LAL GEORGE
SMT. LAKSHMI V. PARAMESWARAN

RESPONDENTS/CLAIMANTS 1 AND 2 AND 1ST RESPONDENT IN OV (MV) No. 1565/07:

1. THANKAMMA, AGED 77 YEARS
W/O. LATE AVARACHAN, PARAICKAL, VETTOT P.O.
MALAYALAPPUZHA VILLAGE, PATHANAMTHITTA 689 645.

2. ALIYAMMA, AGED 62 YEARS
W/O. LATE BABY, KULANJIKOMBIL, NEDUMPRAYAR
KOZHENCHERRY, PATHANAMTHITTA. 689 645.

*3. P.P. RAMACHANDRAN NAIR, AGED 49 YEARS
S/O. NARAYANAN, ARAVINDA BHAVAN, NALAKALKAL
ARANMULA P.O., NOW RESIDING AT POOVANKANDATHILTHUNDIYIL
KIDANGANNOOR, KOZHENCHERRY TALUK
PATHANAMTHITTA. 689 645. **(DELETED)**

**(*RESPONDENT No.3 IS DELETED FROM THE PARTY ARRAY VIDE ORDER DT.4.11.2015
IN I.A.No.3840/2015 IN MACA.2450/2015)**

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2450 OF 2015

DATED THIS THE 17th DAY OF NOVEMBER, 2015

JUDGMENT

P.R.RAMACHANDRA MENON, J.

Grievance of the appellant/insurer is in respect of the quantum of compensation awarded by the Tribunal granting a total sum of ₹1,82,000/- in respect of the demise of a person aged 67 years occurred in a road traffic accident.

2. The accident occurred was on 19.9.2007. When the deceased was walking along the road, he was knocked down by a motor cycle bearing No.KI-03-H-7186 owned by the 1st respondent before the Tribunal, which was insured by the appellant herein. Fatal injuries were sustained by the deceased, who ultimately bid farewell to the world on the same day. This led to the filing of claim petition by the legal representatives of the deceased. The matter was contested only by the appellant/insurer. No violation of statutory condition/policy condition was established and the claim was resisted mainly on general grounds. After considering the facts and figures, the Tribunal arrived at a finding that the accident was occurred because of the negligence on the part of the owner-cum-driver of the vehicle and accordingly proceeded to fix the

compensation.

3. The evidence adduced before the Tribunal consists of the documents produced as Exts.A1 to A5 and nobody was examined on either side. Considering the facts and circumstances with reference to the situation prevailing on the date of accident in the year 2007, a notional figure of ₹3,500/- was taken as the monthly income and after deducting $1/3^{\text{rd}}$ towards personal expenses, the balance was reckoned as contribution to family. Adopting the multiplier of 5, the deceased being a person above 65 years, a sum of ₹1,05,000/- was awarded towards of loss of dependency. Granting amounts under such other relevant heads, a total compensation of ₹1,82,000/- was awarded, which was directed to be satisfied with interest @ 9% per annum, which is sought to be intercepted by this Court in this appeal preferred by the insurer.

4. Heard the learned counsel for the appellant at length. It is stated from the part of the appellant that the claimants were never the dependents, being the siblings of the deceased and as such, no dependency compensation could have been awarded by the Tribunal. Under such circumstances, the maximum benefit

which could have been aspired by the claimants was by way of 'no-fault' claim under Section 140 of the Motor Vehicle Act, as held by the Apex Court in **Manjuri Bera v. Oriental Insurance Company Ltd. (2008(2) KLT 873)**. It is also submitted that, the Tribunal went off the track in awarding ₹5,000/- towards loss of amenities and enjoyment in life, despite the fact that, it was a case of death.

5. The amounts awarded by the Tribunal under various heads as detailed in paragraph No.9 are in the following terms.

Sl. No	Head of claim	Amount claimed	Amount awarded	Basic details	vital
1.	Loss of dependency	75000	105000		
2	Partial loss of earnings	10000	-		
3	Transport to hospital	2000	5000		
4	Extra nourishment	1000	2000		
5	Bystander's expenses	17000	4000		
6	Damage to clothes	1000	1000		
7	Medical expenses	15000	-		
8	Funeral expenses	25000	25000		
9	Pain and sufferings	70000	10000		
10	Loss of love and affection	30000	20000		
11	Loss of consortium	-	-		
12	Loss of estate	100000	5000		
13	Loss of amenities	20000	5000		
	TOTAL	3,75,000 Limited to 3,50,000	1,82,000		

6. This Court finds considerable force in the submission made by the learned counsel for the appellant that, it being a case of death, no amount should have been awarded towards 'loss of amenities and enjoyment in life' and as such, there is no basis for awarding the sum of ₹5,000/-. The question is whether any interference is required in the instant case to effect deduction of the said amount and so also, whether any interference is to be made with regard to the amount of ₹1,05,000/- awarded towards loss of dependency, holding that the claimants were not dependents of the deceased.

7. There is no dispute with regard to the fact that the liability, at least to an extent of the 'no-fault' claim under Section 140 of the Motor Vehicles Act is required to be satisfied, which being a case of death, is ₹50,000/-. The multiplier adopted is '5' and there cannot be any dispute in this regard as well. The amount awarded by the Tribunal towards loss of love and affection in respect of both the claimants is only at the rate of ₹ 10,000/- each, thus granting only ₹20,000/-. It has been held by the Apex Court in **Rajesh v. Rajbir Singh (2013 (3) KLT 89)** that loss of love and affection requires to be compensated to an

extent of **₹1 lakh** and the accident involved in the said case was in the year '2007' as in the instant case. But the fact remains that the loss of love and affection has to be considered with reference to the age of the deceased and that of the claimants, as held by a Division Bench of this Court (referring to the verdict passed by the Apex Court cited supra) in **Valsamma v. Binu Jose (2014 (1) KLT 10)**. In the instant case, it is only to an extent of 10,000/- each and the this Court is of the firm view that at least a sum of **₹50,000/-** should have been awarded by the Tribunal under the above head. Similar variation is possible with regard to some other heads as well, particularly as in the case of loss of estate.

8. The dispute, if any, can only be with regard to the extent of amount awarded beyond Section 140 claim. Considering the facts and figures as above, this Court finds that the alleged excess, if at all, under the particular head can be set off against the other relevant heads and as such, no deduction is required in the instant case. Even otherwise, this Court cannot hold that life of a person aged 67 years is not worth ₹1.82 lakhs, to be challenged by the Insurance Company, by invoking the

remedy under Section 173 of the Motor Vehicles Act. This Court does not find any tenable grounds to call for any interference.

The appeals fails and the same is dismissed accordingly.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

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