

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&**

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

MACA.No. 1125 of 2009 ()

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AGAINST THE AWARD IN OP(MV) 956/2003 OF PRINCIPAL MOTOR ACCIDENTS CLAIMS
TRIBUNAL,KOZHIKODE DATED 14-03-2008**

APPELLANTS/PETITIONERS:

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- 1. VASUDEVAN,S/O.IMBICHI, AGED 83 YEARS**
 - 2. ROHINI, W/O. VASUDEVAN, AGED 81 YEARS,**
 - 3. SABITHA, W/O. (LATE) RANJITH VASUDEVAN,
AGED 48 YEARS**
 - 4. ROSHAN RANJITH, S/O.(LATE) RANJITH VASUDEVAN,
AGED 48 YEARS**
 - 5. ROSHNI D/O. (LATE) RANJITH VASUDEVAN,
AGED 25 YEARS**

**ALL ARE RESIDING AT ROSHNI, P.O.ELATHOOR
KOZHIKODE.**

**BY ADVS.SRI.V.S.CHANDRASEKHARAN
SMT.PRAISHEEL PRAKASAM**

RESPONDENTS/RESPONDENTS:

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- 1. THE MANAGING PARTNER,
M/S. ASHIQU ENTERPRISES,
13/750, ANNIE HALL ROAD
KOZHIKODE.**
 - 2. ABOOBACKER SIDIKU, S/O. CHEKKU,
AGED 24 YEARS, RESIDING AT ETTARAMKOTTUMMAL HOUSE
P.O. NEELESWARAM, MUKKAM, KOZHIKODE.**
 - 3. UNITED INDIA INSURANCE, CO. LTD.,
DIVISIONAL OFFICE, WHITE LINES BUILDING, KALLAI ROAD
KOZHIKODE.**

**R1 & R2 BY ADV. SRI.CIBI THOMAS
R3 BY ADV. SRI.A.R.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.1125 of 2009

Dated this the 29th day of May, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the award dated 14.3.2008 made in O.P.(M.V.)956/2003 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode.

2. The petitioners in the above claim petition are the appellants herein. The appellants are the legal heirs and dependents of the deceased, who died as a result of an accident, occurred on 29.01.2003 at about 9.15 p.m. The case of the appellants is that the deceased was riding a motorcycle bearing registration No.KL 11/8230 on Kozhikode – Chettikulam road and it was hit by a mini lorry bearing registration No.KL 11/K 758, which came from the opposite side. It is the case that the accident occurred due to the negligence of the driver of the mini lorry. The rider of the bike, who sustained injuries succumbed on 2.2.2003 while undergoing treatment at Medical College Hospital.

3. The Tribunal found that the accident occurred due to the negligence of the driver of the mini lorry and awarded a total compensation of Rs.2,31,500/- to the appellants herein. Challenging the quantum and alleging inadequacy of the compensation, this appeal preferred.

4. We heard the counsels appearing for the appellants as well as for the Insurance Company.

5. The appellants' counsel submitted before us that the deceased was aged 47 years at the time of accident. The aged parents as well as his wife and children were depending upon him. He was a businessman and was an income tax assessee. It is the case of the appellants that he was earning Rs.8,000/- per month by doing business. It is also submitted before us that he was doing business in bakery items. The Tribunal considered only a notional income of Rs.2,000/- for assessing the dependency. Towards pain and suffering, the Tribunal only awarded Rs.7,000/-, whereas, towards funeral expenses only Rs.2,000/-. Even though the wife was only aged 42 years the amount

awarded towards consortium is only Rs.10,000/-. No amount is seen awarded towards loss of love and affection or loss of estate. Thus compensation is re-assessed as follows:

Head of claim	Amount awarded in rupees
Dependency	4000 x 12 x 13 x 3/4 468000
Consortium	100000
Pain and suffering	15000
Medical expenses	3500
Funeral expenses	25000
Transportation	1000
Loss of love and affection	100000
Loss of estate	30000
Total	742500 (Rupees seven lakhs forty two thousand five hundred only)

Accordingly, the compensation will be Rs.7,42,500/- (Rupees seven lakhs forty two thousand five hundred only), out of enhanced compensation, 50% shall be given to the third appellant and the balance amount shall be shared equally in between appellants 4 & 5. The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation. There will be a direction to

the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimants to withdraw the amount when the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/