

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

MACA.No.1650 of 2014 (C)

AGAINST THE AWARD IN OP(MV).No.762/2012 of Prl.M.A.C.T.,KOZHIKODE
DATED 13-02-2013

APPELLANTS/PETITIONERS:

1. KALAVATHI, AGED 57 YEARS,
W/O.VASUDEVAN NAIR (LATE), RESIDING AT 293 B (8/300),
SREEKALA HOUSE, OTHAYOTH, P.O.THALAKULATHOOR,
KOZHIKODE.
2. SWARNALATHA, AGED 39 YEARS,
W/O.GOPALAKRISHNAN, 1576 F (18/1479), GOPIKA,
KOZHIKODE.
3. JYOTHISH, AGED 36 YEARS,
S/O.VASUDEVAN NAIR, SREEKALA HOUSE, 293 B (8/300),
OTHAYOTH, P.O.THALAKULATHOOR, KOZHIKODE.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS/RESPONDENTS :

1. CHANDRAHASAN, AGED 49 YEARS,
S/O.VELAYUDHAN, SHYAMABHAVANAM, P.O.THALAKULATHOOR,
KOZHIKODE – 673
2. THE NEW INDIA ASSURANCE CO. LTD.,
DIVISIONAL OFFICE – II, SHAFEER COMPLEX, OPP. YMCA,
KANNUR ROAD, KOZHIKODE – 673 032.

BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MACA.No.1650 of 2014 (C)

APPENDIX

APPELLANTS' ANNEXURE :-

ANNEXURE A : COPY OF THE COMMUNICATIONS NARRATING THE
PROCEEDINGS INITIATED AGAINST SRI.SANTHOSH KUMAR.K.P.

RESPONDENTS' ANNEXURE :- NIL.

True copy

P.A to Judge

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

M.A.C.A.No.1650 OF 2014

DATED THIS THE 3rd DAY OF DECEMBER, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The appellants are the claimants in OP(MV)No.762/2012 on the file of the Principal Motor Accident Claims Tribunal, Kozhikode. It was an application filed under Section 166 of the Motor Vehicles Act, claiming compensation on account of the death of the deceased by name Vasudevan Nair, in a motor accident occurred on 29.8.2011. The claimants being the dependents of the deceased filed claim petition claiming a total compensation of ₹3,39,000/-. The Tribunal by award dated 13.2.2013 held that the accident had occurred due to the rash and negligent driving of the autorickshaw by the 1st respondent and that the 2nd respondent who is the insurer of the said vehicle is liable to pay the amount of compensation. The Tribunal awarded a total compensation of ₹2,60,000/- under different heads and directed the 2nd respondent insurer to pay the said amount together with interest at 7% per annum from the date of petition till deposit with proportionate costs. Dissatisfied with the

amount of compensation awarded by the Tribunal under different heads, the appellants are before this Court in this appeal, seeking enhancement of compensation.

2. We heard the arguments of the learned counsel for the appellants and also the learned counsel for the 2nd respondent insurer.

3. The pleadings and materials on record would show that at the time of the accident, the deceased was aged 62 years. Though the case of the claimants before the Tribunal was that the deceased was a soda maker earning a sum of ₹10,000/- per month, there was no reliable materials before the Tribunal to arrive at a finding regarding the monthly income of the deceased. Therefore, considering the totality of the circumstances, the Tribunal fixed a notional monthly income of the deceased at ₹3,500/- and calculated the loss of dependency at ₹1,96,000/- by applying the multiplier of '7' and deducting 1/3rd towards personal expenses. The fixation of compensation towards loss of dependency made by the Tribunal is perfectly legal and the said amount represents a just and reasonable compensation payable

under that head, which warrants no interference in this appeal.

4. Towards loss of consortium and towards loss of love and affection, the Tribunal awarded a sum of ₹10,000/- and ₹25,000/- respectively. In the decision reported in **Rajesh v. Rajbir Singh (2013 (3) KLT 89)**, the Apex Court held that in appropriate cases, a maximum of ₹1,00,000/- has to be awarded under the head loss of consortium. In that case the deceased was aged 33 years and his wife was still young. A Division Bench of this Court after referring to the decision of the Apex Court in Rajesh's case (supra) has held in **Valsamma and another v. Binu Jose and others (2014 (1) KLT 10)** and in **Mary and others v. United India Insurance Co.Ltd. and Others (2014 (1) KLJ 805)** that the age of the deceased, the age of the wife, the period for which consortium is lost, period of marital life, etc. are relevant factors to be considered while fixing compensation payable under the head loss of consortium. In the case on hand, the deceased was aged 62 years and his wife, the 1st appellant herein was aged 56 years. Considering these aspects, we refix the compensation payable under the head loss of consortium at ₹

50,000/-. Similarly, the children of the deceased, the 2nd and 3rd appellants herein, were aged 38 years and 35 years respectively, who have lost the support and guidance of their father. Considering these aspects, the compensation payable towards loss of love and affection is also refixed as ₹60,000/-. Thus the appellants will be entitled for an additional compensation of **₹40,000/-** and **₹35,000/-** respectively under the heads loss of consortium and loss of love and affection.

5. Towards funeral expenses, the Tribunal awarded only a sum of ₹8,000/-. In view of the judgment of the Apex Court in Rajesh's case (supra), we refix the compensation payable towards funeral expenses as ₹25,000/-. Thus, the appellants are entitled for an additional sum of **₹17,000/-** under this head.

6. The compensation awarded by the Tribunal under the head transportation to hospital, loss of estate and pain and suffering represent a just and reasonable compensation under those heads, which warrants no enhancement at the hands of this Court.

7. In the result, the award passed by the Tribunal is

modified by granting an additional compensation of ₹**92,000/-** to the claimants. The claimants will be entitled for interest @ 9% p.a. from the date of petition till deposit for the additional compensation awarded in this appeal. Since the insurance coverage of the vehicle involved in the accident is admitted , the 2nd respondent insurer shall deposit the additional compensation together with interest before the Tribunal within a period of one month from today.

The appeal is disposed of as above.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
ANIL K.NARENDRA,
JUDGE

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True copy

P.S.to Judge