

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

MACA.No. 1158 of 2010 ()

AGAINST THE AWARD IN OPMV 437/2006 of M.A.C.T.,KOLLAM DATED 23-01-2010

APPELLANTS/PETITIONERS:

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1. C.LEELAMMA, AGED 54 YEARS
W/O. LATE RADHAKRISHNAN, BRAHMANAZHIKOM VEEDU
(SREE SYLAM), KADAPPAKKADA.P.O., VRINDHAVAN NAGAR
KOLLAM.
 2. L.SUNITHA, AGED 27 YEARS, D/O. LEELAMMA,
BRAHMANAZHIKOM VEEDU (SREE SYLAM), KADAPPAKKADA.P.O.
VRINDHAVAN NAGAR, KOLLAM.
 3. R.SUNIL KUMAR AGED 35 YEARS,
S/O. LATE RADHAKRISHNAN, BRAHMANAZHIKOM VEEDU
(SREE SYLAM), KADAPPAKKADA.P.O., VRINDHAVAN NAGAR
KOLLAM.
 4. R.SAJEEV KUMAR, AGED 30 YEARS,
S/O. LATE RADHAKRISHNAN, BRAHMANAZHIKOM VEEDU
(SREE SYLAM), KADAPPAKKADA.P.O., VRINDHAVAN NAGAR
KOLLAM.

BY ADV. SRI.B.CHANDRA LAL

RESPONDENT(S) :

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1. E.MANOJ KUMAR, PUTHIYA VEEDU, KURA,
KOTTARAKKARA, KOLLAM-691506.
 2. SASI KUMAR, S/O. RAMASWAMI NADAR,
9/155, PULLIYARAKOVIL STREET, DURAISWAMIPURI
THENKASI-627811.
 3. THE BRANCH MANAGER,
NATIONAL INSURANCE COMPANY LTD.
KOTTARAKKARA BRANCH-691506.

R2 BY ADV. SRI.K.G.ANIL BABU
R2 BY ADV. SRI.R.RAJESH (PULLIKADA)
R3 BY ADV. SMT.DEEPA GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

SHAJI P. CHALY, JJ.

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M.A.C.A. No. 1158 of 2010

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Dated, this the 1st day of December, 2015

JUDGMENT

Shaji P. Chaly, J.

Claimants in O.P.(M.V) No. 437 of 2006 of the Motor Accidents Claims Tribunal Kollam dissatisfied with the award dated 23.01.2010 have preferred this appeal. They are the legal heirs and dependents of the victim who died in the accident.

2. The facts in brief are as follows :

On 02.09.2005 at about 6.15 p.m. the deceased was riding a bicycle through the Kollam - Kannanalloor road from west to east along the left side. When the deceased reached in front of the Railway Hospital, a private bus bearing registration No. KL 02 T 3366 driven by the second respondent from east to west came in a rash and negligent manner and hit against an autorikshaw and then the deceased. Thereupon the deceased sustained serious injuries and later succumbed to the same in the hospital on the very same day. It

is thus claiming compensation the legal heirs of the deceased preferred application before the Tribunal.

3. Respondents 1 and 2, registered owner and driver of the offending vehicle respectively, remained exparte. The insurer of the vehicle namely 3rd respondent contested the proceedings and disputed the age, occupation and income of the deceased. It was also contended that the alleged accident has occurred solely due to the rash and negligent riding of the bicycle by the deceased and that the second respondent was driving the vehicle with due care and caution.

4. In order to substantiate the contentions, the claimants have produced Exts. A1 to A10 documents. No oral evidence was adduced either by the claimants or by the 3rd respondent Insurance Company. After appreciating the entire facts and figures, the Tribunal has awarded a total compensation of Rs.2,31,612/-, rounded to Rs.2,31,700/-. The Tribunal awarded the said amount under various heads as follows :

Transportation to hospital and funeral expenses	: Rs.5000/-
Compensation for pain and sufferings	: Rs.5000/-

Compensation for loss of dependency (incorrectly shown as compensation for continuing permanent disability)	: Rs.89,640/- + Rs.1,11,972/- [(actual salary for 1 year - 1/3 towards personal expenses) + (future dependency - 1/3 rd)
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Compensation for loss of consortium	: Rs.10,000/-
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Compensation for love and affection	: Rs.10,000/-
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It is thus not satisfied with the award, this appeal is filed.

5. Heard the learned counsel for the appellants and the learned counsel for the 3rd respondent.

6. Having considered the rival submissions made at the Bar, and perusal of the records we find that the deceased was aged 59 years at the time of the accident and he was a mechanic in the Southern Railway. On appreciation of the award, we find that the monthly income arrived by the Tribunal at Rs.1333/- after the retirement is very meagre, and normally a qualified person like the deceased would fetch sufficient work and augment more income and therefore we are of the considered opinion that the income for future earning will have to be taken @ Rs.4000/- per month. Likewise as held by the Apex Court in **Sarla Verma Vs. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, considering

the age of 59 years, multiplier of 8 instead of 7, has to be taken. Therefore the monthly income when calculated at that rate by applying multiplier of 8 for the loss of future dependency, the appellants are entitled to get an amount of Rs.2,56,000/- [i.e. $4000 \times 12 \times 8 \times 2/3$]. Thus the appellant is entitled to get an amount of Rs.3,45,640/- together for the loss of dependency against the awarded amount of Rs.2,01,612/-, thus resulting in an enhancement of **Rs.1,44,028/-** under this head. So also we find, towards compensation for the loss of consortium, the Tribunal has awarded only a sum of Rs.10000/-, which according to us is a very low figure taking into the age of the deceased. Therefore we are of the opinion that same will have to be enhanced to Rs.50000/-, thus the appellants are entitled to get a further sum of **Rs.40,000/-** for loss of consortium. That apart towards compensation for loss of love and affection, the amount awarded is only Rs.10,000/- which according to us is also very low. Considering the fact that the deceased has left behind his wife and three children, under that head amount can be enhanced to Rs.75000/-, thus resulting in an additional compensation of **Rs.65,000/-**. Thus, over and above the compensation already awarded by the Tribunal, the appellants

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are entitled to get an amount **Rs.2,49,028/- (Rupees Two lakhs Forty nine thousand and Twenty eight only).**

In the circumstances, third respondent Insurance Company is directed to pay the said enhanced compensation along with balance if any awarded by the Tribunal within a period of one month from the date of receipt of a copy of this judgment with interest @ 9% to the enhanced compensation from the date of petition till the date of deposit.

sd/-

**P. R. RAMACHANDRA MENON,
JUDGE**

sd/-

**SHAJI P. CHALY,
JUDGE**

kmd

/True copy/

P.A. to Judge