

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

MACA.No. 2985 of 2015 ()

AGAINST THE AWARD IN OPMV 1342/2011 of MACT, IRINJALAKUDA DATED
17-06-2015

APPELLANTS/PETITIONERS 2 TO 7:

1. THRESSIAMMA,
D/O.LATE ANTHONY, MEPPULLY HOUSE
VELLIKULANGARA-KORMALA DESOM, KUTTICHIRA VILLAGE
VELLIKULANGARA.P.O, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.
2. MARY,
D/O.LATE ANTHONY, -DO- -DO-
3. CICILY,
D/O.LATE ANTHONY, -DO- -DO-
4. MARY,
W/O.LATE JOSE, -DO- -DO-
5. SMITHA,
D/O.LATE JOSE, ST.DOMINIC'S CONVENT, SREEKRISHNAPURAM
OTTAPALAM.P.O, PALAKKAD.
6. SMIGI,
D/O.LATE JOSE, W/O.SUNNY, AMBADAN HOUSE
VELLIKULANGARA.P.O, KUTTICHIRA VILLAGE
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADV. SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS:

1. GENERAL MANAGER,
STATE EXPRESS TRANSPORT CORPORATION(TN) LTD
PALLAVAN SALAI, CHENNAI-600002.
2. CHANDRAN.G,
S/O.GOVINDA SWAMY, VADAKARAI, THAZHANU
THIRUKOILUR TALUK, VILUPURAM DISTRICT
TAMILNADU-605757.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

'CR'

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

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M.A.C.A. No. 2985 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

RAMACHANDRA MENON, J

To what extent a human being can be tapped, to extract money, referring to a tragic road traffic accident involving accidental death of an old man aged 82 years, is the point involved in this case. The loss of life and farewell to this world is of course disturbing, which cannot be compensated in terms of money. But when it is sought to be measured in terms of compensation payable, the matter necessitates wider consideration, that too when, such claim petition is filed by persons claiming themselves as dependents, are age old sons and daughters having separate families and leading their lives accordingly.

2. The accident in the instant case was occurred on 30.9.2011. The deceased was an octogenarian, having crossed the age of 82 years. It is stated that, he was standing on the side of NH-47 near Koratty, when the stage carriage owned by the 1st respondent and driven by the second respondent came in a rash and negligent manner and knocked him down. This was sought to be compensated by filing claim petition before the Motor Accidents Claims Tribunal, Irinjalakuda.

3. The claim put forth by the claimants before the Tribunal was that, the deceased was an earning member, generating income by way of selling lottery tickets and that the claimants were the 'dependents' of the deceased, being the son/daughters. The 1st claimant, during the course of proceedings took his last breath, pursuant to which his widow and children were brought into the party array as additional claimants 5 to 7. Respondents 1 and 2 did not choose to contest the matter and were set ex-parte. The evidence adduced before the Tribunal consists of A1 to A10. After hearing the matter, the Tribunal, based on the materials produced, arrived at a finding that the accident was caused solely because of the negligence on the part of the 2nd respondent and proceeded to fix the liability accordingly.

4. Even though no evidence was adduced by examining anybody before the Tribunal or by producing any documents as to the occupation or income of the deceased, the Tribunal reckoned a notional income of ₹**5,000/-** and worked out the compensation payable. It was observed in paragraph 10 of the award that the petitioners before the Tribunal were the dependents of the deceased and in the said circumstances, 1/3rd was deducted towards personal expenses and the balance was reckoned as contribution to the family. Considering the age of deceased as over 82 years, a multiplier of '3' was taken and compensation towards loss of dependency was worked

out as ₹1,20,024/-. The amounts awarded by the Tribunal under different heads, as given in paragraph 16, are as given below:

Sl. No.	Head of claim		Amount awarded (Rs.)	Basis vital details in a nut shell
1	Transportation expenses	5000	2000	
2	Damage to clothing	1000	----	
3	Extra nourishment	2000	----	
4	Funeral expenses	50000	20000	
5	Pain and suffering	25000	15000	
6	Loss of dependency	240000	120024	(40008X3)
7	Loss of estate	30000	10000	
8	Loss of love & affection	20000	30000	
9	Loss of expectation of life	20000	---	
10	Shock & anxiety	25000	---	
	Total	384000/- (limited to Rs.2,00,000)	197024/-	Rs.197024/- along with interest at the rate of 8% p.a from 15.12.11 till date of deposit.

This total compensation of ₹1,97,024/- was directed to be satisfied with interest at the rate of 8% per annum from 15.12.2011, the date of the petition, till the date of deposit, which is stated as inadequate and hence the appeal

5. Heard the learned counsel for the appellants at length.

6. The learned counsel for the appellants submits that the grievance is only against the reckoning of 'proper multiplier'.

According to the appellants, the Tribunal ought to have reckoned a multiplier of '5' as applicable in the case of persons who have crossed the age of 60 years, as given in the 2nd schedule, and not '3'. This is sought to be rectified/interfered by this Court by way of this appeal.

7. At the very outset, this Court is of the view that the course pursued by the Tribunal granting compensation towards loss of dependency does not appear to be correct, for the fact that all the claimants before the Tribunal were aged 57 years, 55 years, 52 years, and 48 years respectively; who were the children of the deceased and were leading independent life of their own, living with their spouse and children. When the concerned applicants contend that they were still depending upon the father aged more than 82 years, it may have to be presumed that the so-called children, instead of living as dutiful/responsible son/daughters, discharging their obligation to their age old father, allowing him to take rest and lead a peaceful living on the eve of his life, were virtually driving him to do some or other avocation of his own, earning income and providing the same to be shared among themselves, which cannot but be deprecated by this Court. It may be a case where the deceased would not have intended or desired to pull on at the mercy of others, though they are his children, thus compelling him to eke out his livelihood by some or other means. But then, because of the death of such person, it cannot

be said that it has resulted in any loss of dependency to be claimed by the others, as they are the grown up children and living separately of their own.

8. Viewed in the above perspective, the very claim put up by the concerned claimants stating that they were depending upon the income of the deceased father aged 82 years, could not have been a ground to award compensation towards loss of dependency to the concerned claimants/appellants before this Court. They of course are entitled to get compensation towards loss of love and affection, loss to the estate or such other heads, apart from the actual expenses. It is also relevant to note that in fixing the quantum of compensation payable under such heads, particularly loss of love and affection, (or in the case of loss of consortium, where it is applicable), the age of the deceased as well as the age of the claimants will necessarily have to be considered, as held by a Division Bench of this Court in **Valsamma v. Binu Jose** 2014 (1) KLT 10. The said decision has been rendered after making a reference to the judgment rendered by the Supreme Court reported in **Rajesh and Others v. Rajbir Singh and Others** 2013 (3) KLT 89 (SC).

9. The quantum of compensation awarded by the Tribunal under different heads, granting a total compensation of ₹1,97,024/-, has to

be considered to analyse whether it is a 'just' award or not and whether any modification has to be made with regard to the multiplier adopted, based on the submissions made by the learned counsel for the appellants. On considering the matter in the above context, this Court finds that no variation is required merely with reference to the multiplier of '5' (which should have been adopted, according to the appellants, in place of the reckoned multiplier 3). The loss of dependency has been adequately compensated and it cannot but be said as a 'just' award under Section 168 of the MV Act. Interference is declined and the appeal stands dismissed.

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

**ANIL K. NARENDRA,
JUDGE**

kp/-