

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.VASHA

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

MACA.No. 1587 of 2009 ()

**AGAINST THE AWARD IN OPMV 1561/2003 of PRINCIPAL MOTOR ACCIDENT
CLAIMS TRIBUNAL, KOZHIKODE**

APPELLANTS/PETITIONERS IN OP(MV):

- 1. RAGHAVAN P.M., S/O.KELU, RESIDING AT
MANNANTHODUKAYIL HOUSE, P.O.MANASSERY, KOZHIKODE.**
- 2. NARAYANI, W/O.NARAYANAN, RESIDING AT
MANNANTHODUKAYIL HOUSE, P.O.MANASSERY
KOZHIKODE (DIED).**
- 3. ADHITHYAN (MINOR), REP.BY HIS FATHER
& LEGAL GUARDIAN, RAGHAVAN P.M. (FIRST APPELLANT)
RESIDING AT MANNANTHODUKAYIL HOUSE, P.O.MANASSERY
KOZHIKODE.**

**BY ADVS.SRI.AVM.SALAHUDIN
SMT.P.YSHEHEERA**

RESPONDENTS/RESPONDENTS IN OP(MV):

- 1. P.P.BALAKRISHNAN, RESIDING AT EDATHALATH HOUSE,
P.O.CHATHAMANGALAM, VIA; R.E.C., KOZHIKODE.**
- 2. LATHEEF, S/O.MUHAMMED, RESIDING AT
THEKKETHODIKAYIL HOUSE, P.O.CHATHAMANGALAM, KOZHIKODE.**
- 3. UNITED INDIA INSURANCE CO.LTD.,
CITY BRANCH-I, RAMEEZ ARCADE,
C.H.FLY OVER JUNCTION, KOZHIKODE.**

**R1 &R2 BY ADV. SRI.M.MUHAMMED SHAFI
R3 BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

M.A.C.A.No.1587 OF 2009

Dated this the 10th day of March, 2015

J U D G M E N T

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**P.V.Asha, J.**

Appellants are husband, mother and minor child of deceased Manjusha, who met with an accident on 25.2.2003 while she was travelling on a motor cycle as a pillion rider. The motor cycle was hit by a bus and she sustained severe injuries. She succumbed to the injuries on 29.2.2003, while undergoing treatment at Ganga Hospital, Coimbatore.

2. It was claimed that the deceased was employed as a tailor and was earning a sum of Rs.6,000/- per month. The claim petition was filed seeking compensation to the tune of Rs. 5,00,000/-. The Tribunal awarded a sum of Rs.2,53,121/- and deducted 30% from it towards contributory negligence. In effect, the award amount was Rs.1,77,185/-.

3. This appeal is filed seeking enhancement of compensation and challenging the finding regarding the contributory negligence and consequential deduction.

4. We heard the learned counsel appearing for the appellants as well as the learned standing counsel for the Insurance Company.

5. The learned counsel for the appellant submitted that the income reckoned by the Tribunal is very low and the amount awarded under various heads are inadequate. It is also submitted that being a pillion rider, the Tribunal ought not have deducted any amount towards contributory negligence. It is also submitted as per the final charge report before the criminal court the driver of the bus is implicated as accused. On the other hand, the learned counsel for the Insurance Company pointed out that the appellants did not adduce any evidence.

6. The Tribunal has found that both the vehicles were negligent for causing the accident. As the final report is implicating the driver of the bus as accused and not the rider of the motor cycle, we are of the view that the contributory negligence can be fixed as 15% on the rider of the motor cycle, instead of 30% found by the Tribunal.

7. The Tribunal has fixed the notional income of the deceased at Rs.17,000/- only. It is pointed out that the deceased

was working as a tailor. Even assuming that she was only a house wife, we are of the view that a sum of Rs.3,000/- can be fixed as monthly income. She was aged 28 at the time of accident. Adopting the multiplier as 17 and after deducting 2/3<sup>rd</sup> towards personal expenses, the compensation under the head of loss of dependency will come to Rs. 4,08,000/- (3000x 12x2/3x17). The Tribunal has awarded a sum of Rs.2,000/- alone towards funeral expenses and Rs.10,000/- towards love and affection. No amount is awarded towards loss of consortium. In the light of the judgment in **Rajesh v. Rajbir Singh** [2013(3) KLT 89] the claimants are entitled to Rs.25,000/- towards funeral expenses, Rs. 1,00,000 towards love and affection and Rs.1,00,000/- to the husband for loss of consortium. As the deceased succumbed to the injuries only after a period of hospitalisation for four days, we award a sum of Rs.5,000/- towards bystanders expenses, damage to cloth etc, instead of Rs.3,000/- awarded by the Tribunal towards incidental charges.

8. The award passed by the Tribunal is accordingly modified as follows:

| <i>Head</i>                                 | <i>Amount awarded by<br/>the Tribunal</i> | <i>Amount<br/>modified</i> |
|---------------------------------------------|-------------------------------------------|----------------------------|
| Dependency                                  | 203999                                    | 408000                     |
| Pain and suffering                          | 12000                                     | 12000                      |
| Medical expenses &<br>Transportation charge | 22122                                     | 22122                      |
| Incidental charge                           | 3000                                      | 5000                       |
| Love and affection                          | 10000                                     | 100000                     |
| Funeral expenses                            | 2000                                      | 25000                      |
| Loss of consortium                          | ---                                       | 100000                     |
| <b>Total</b>                                | <b>253121</b>                             | <b>672122</b>              |

9. The modified amount will come to Rs. 6,72,122/-. After deducting 15% towards contributory negligence, the compensation due to the appellants will be Rs.5,71,303/-. It is rounded off Rs.5,71,300/-. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition. Out of the total compensation, a sum of Rs. 2,00,000/- along with interest shall be paid to the child, Rs.10,000/- shall be paid to the mother of the deceased and the balance amount along with interest have to be paid to the husband - 1<sup>st</sup> appellant.

10. The Insurance Company shall pay the amount, less any amount already deposited as per the award impugned,

within a period of three months. The Tribunal shall recover the court fee in deficit from the amount deposited before the Tribunal.

Appeal is allowed accordingly and the parties shall suffer their respective costs.

**sd/-**

**T.R.RAMACHANDRAN NAIR,  
JUDGE.**

**sd/-**

**P.V.ASHA, JUDGE.**

Ps/16/3/2015

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PA to Judge