

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

MACA.No. 402 of 2008 ()

AGAINST THE AWARD IN OP(MV) 80/2006 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
KALPETTA DATED 30-10-2007

APPELLANTS/PETITIONERS:

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1. M.M.DEEPA, W/O. LATE SATHEESAN
KIZHAKKEPARAMBIL HOUSE, KUPPADI AMSOM, S.BATHERY TALUK.
 2. K.S.SANTHRA, (MINOR) D/O.LATE SATHEESAN,
REPRESENTED BY DEEPA, FIRST PETITIONER
KIZHAKKEPARAMBIL HOUSE, KUPPADI AMSOM, S.BATHERY TALUK.
 3. K.S.ATHIRA, (MINOR) D/O.LATE SATHEESAN,
REPRESENTED BY DEEPA, FIRST PETITIONER
KIZHAKKEPARAMBIL HOUSE, KUPPADI AMSOM, S.BATHERY TALUK.
 4. MEENAKSHI, W/O. LATE DAMODARAN
KIZHAKKEPARAMBIL HOUSE, MOOLANKAVE P.O.
KUPPADI AMSOM, S. BATHERY TALUK

BY ADV. SRI.S.M.PRASANTH

RESPONDENTS/RESPONDENTS:

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1. RASHEED C., S/O. BEERANKUTTY
CHALIL HOUSE, PADINJARATHARA AMSOM
PADINJARATHARA P.O., VYTHIRI TALUK
(DRIVER OF KL 12/B 7188 MARUTHI CAR).
 - * 2. MOIDU, S/O.ABDULLA, MUTTAN HOUSE,
PADINJARATHARA AMSOM, VYTHIRI TALUK
(OWNER OF KL 12/B 7188 MARUTHI CAR) (DELETED)

[RESPONDENT NO.2 IS DELETED FROM THE PARTY ARRAY VIDE ORDER DATED
21.1.2015 IN I.A.NO.188/2015 IN MACA 402/2008]

3. THE MANAGER, NATIONAL INSURANCE
COMPANY LTD., KOZHIKODE BRANCH, KOZHIKODE
(POLICY NO. 8519306).

R3 BY ADV. SRI.E.M.JOSEPH

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

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

M.A.C.A. No.402 of 2008

Dated this the 3rd day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellants are respectively the widow, two children and mother of late Sri. Satheesan. He was involved in an accident which occurred on 15.6.2005 at 1.45 p.m. He was riding a motorcycle bearing registration No.KL 12A/9906 from Sulthan Bathery to Meenangadi. When he reached near St.Antony Engineering Industrial Works a car bearing registration No.KL 12B/7188 which came from the opposite direction in a rash and negligent manner hit the motorcycle. He was immediately taken to PBM hospital, Meenangadi and from there to Medical College Hospital, Calicut where he succumbed to the injuries on 16.6.2005.

2. As against the total claim of Rs.8 lakhs the Tribunal awarded Rs.2,85,000/- and it was also held that

only half of the compensation alone need be paid, since according to the Tribunal the deceased had also contributed to the accident by 50%.

3. We heard the learned counsel for the appellants and the learned counsel for the Insurance Company.

4. As regards the finding of the contributory negligence the learned counsel for the appellants submitted that the deceased was not arrayed as an accused in a criminal case and the driver of the offending vehicle alone was charge sheeted. Our attention is invited to the final report in the said criminal case which has been produced and marked as Annexure A1 in this appeal. The offences alleged against the first respondent driver are under Sections 279 & 304 (A) IPC.

5. There is no contra evidence on the part of the respondents to prove any contributory negligence as against the deceased. Therefore in the light of the decision of this court in **New India Assurance Co. Ltd. v. Pazhaniammal [2011 (3) KLT 648]** final report in the

criminal case will be prima facie sufficient evidence to prove negligence as against the driver of the offending vehicle. In this case we also find that neither the owner nor the driver of the offending vehicle had adduced any evidence to prove that the deceased was in any manner negligent. Therefore we find that the said finding of the Tribunal cannot survive and we vacate the same.

6. The next aspect is regarding the compensation awarded by the Tribunal. Going by the award for pain and suffering Rs.10,000/-, for transport to hospital Rs.2,000/-, for funeral expenses Rs.3,000/-, for loss of love and affection Rs.30,000/- and for dependency Rs.2,40,000/- have been awarded.

7. It is pointed out by the learned counsel for the appellants that he was a Supervisor working in Brahmagiri Development Society, Wayanad in a permanent post. He was earning Rs.3,450/- at that point of time. He was actually a Supervisor of Watershed Development and Supervisor under the said project in Sulthan Bathery Block. He was

also imparting training, for which, he was being paid Rs.250/- per day. He used to attend three or four such training classes every month.

8. In this case there is evidence from the examination of PW2 Chief Executive Officer of the Brahmagiri Development Society, who has issued the salary certificate Ext.A7 showing that the deceased was getting Rs.3,450/- per month as salary. We find no reason to discard the same. Therefore, we are of the view that Rs.3,450/- can be accepted as his monthly income, subject to the reasonable enhancement for future prospects. He was aged 40 at the time of accident, and going by the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** 30% will have to be adopted for future prospects. Therefore the amount will be Rs.4,485/- and the multiplier will be 15, which we adopt and the loss of dependency will be $(4485 \times 12 \times 15 \times \frac{3}{4})$ Rs.6,05,475/-. We also are of the view that the amount awarded towards funeral expenses require

enhancement to Rs.25,000/-, for loss of love and affection the amount will be Rs.1,00,000/-, and towards loss of consortium also we grant an amount of Rs.1,00,000/-. The next aspect is regarding the non-granting of amounts towards loss of estate. He was having a permanent employment evidently. Therefore we grant an amount of Rs.50,000/- towards loss of estate also.

Accordingly, we refix the compensation as shown below:

Head of claim	Amount awarded in rupees
Pain and suffering	10000
Transport to hospital	2000
Funeral expenses	25000
Love and affection	100000
Dependency	605475
Loss of consortium	100000
Loss of estate	50000
Total	892475
	Rounded off to Rs.8,92,500/-

Therefore the total compensation will be Rs.8,92,475/- which rounded off to Rs.8,92,500/- (Rupees eight lakhs ninety two thousand five hundred only). The amount will be apportioned in the following manner.

We award Rs.50,000/- out of the enhanced compensation along with interest to appellant No.4 mother of the deceased and also award Rs.1,00,000/- each along with interest to appellants No.2 & 3 the daughters and the balance amount will be released to appellant No.1. As far as the share of appellants 2 & 3 are concerned the amount will be deposited in a nationalised bank till they attain majority. As far as deposit of the amount in favour of appellants 2 & 3 are concerned, they are free to withdraw the amount when they attain majority. The enhanced compensation will carry interest at the rate of 9% per annum 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. The appellants will have to pay balance court fee which will be recovered by the Tribunal from the amount to be 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**

//True copy//

P.A. TO JUDGE

shg/