

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

MACA.No. 2272 of 2014 ()

AGAINST THE AWARD IN OPMV 559/2009 OF THE MACT,KASARAGOD DATED 14-02-
2014

APPELLANT(S)/APPELLANT/3RD RESPONDENT:

THE ORIENTAL INSURANCE COMPANY LIMITED
KASARAGOD NOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, METRO PALACE, KOCHI 18

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENT(S)/RESPONDENTS/PETITIONERS AND 2ND RESPONDENT:

1. NAFEESA
W/O.ABDUL KHADER, SHAHI MANZIL, NEAR GHSS
ALAMPADY, ALAMPADY P.O, KASARAGOD TALUK, PIN 671 320
2. ABDULLA,
S/O.ABDUL KHADER, SHAHI MANZIL, NEAR GHSS
ALAMPADY, ALAMPADY P.O, KASARAGOD TALUK PIN 671 320
3. SAFIYA
S/O.ABDUL KHADER, SHAHI MANZIL, NEAR GHSS
ALAMPADY, ALAMPADY P.O, KASARAGOD TALUK PIN 671 320
4. ABDUL NAZAR,
S/O.ABDUL KHADER, SHAHI MANZIL, NEAR GHSS
ALAMPADY, ALAMPADY P.O, KASARAGOD TALUK PIN 671 320
5. MOHAMMAD ALI
S/O.ABDUL KHADER, SHAHI MANZIL, NEAR GHSS
ALAMPADY, ALAMPADY P.O, KASARAGOD TALUK PIN 671 320
6. MAHIN KUNHI I.A,
S/O.ABDUL KHADER, SHAHI MANZIL, NEAR GHSS
ALAMPADY, ALAMPADY P.O, KASARAGOD TALUK PIN 671 320
7. NAZEEMA
W/O.BASHEER, NABHAM VILLA, ALAMPADY P.O
KASARAGOD TALUK 671 320

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8. SIRAJUDHEEN
S/O.ABDUL KHADER, SHAHI MANZIL, NEAR GHSS
ALAMPADY, ALAMPADY P.O, KASARAGOD TALUK PIN 671 320

9. C.M ABDULLA
S/O.C.M MUHAMMED, SHANU VILLA, KSHB
INDIRA NAGAR, CHENGALA, KASARAGOD DISTRICT PIN 671 320

R1-R8 BY ADV. SRI.JAWAHAR JOSE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

ANIL K. NARENDRAN, JJ.

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M.A.C.A. No. 2272 of 2014

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Dated, this the 3rd day of November, 2015

JUDGMENT

Anil K. Narendran, J.

The appellant in this appeal is the 3rd respondent in O.P.(MV) No. 559 of 2009 on the files of the Motor Accidents Claims Tribunal, Kasargode. The said claim petition was filed by the respondents 1 to 8 herein claiming a total compensation of Rs.8,43,100/- on account of the death of one Shafi, aged 23 years, in a motor accident occurred on 05.06.2009. The deceased was riding a motorcycle bearing registration No. KL 14/G 3460. A scooter bearing registration No. KL 14/A 2228 ridden by the 1st respondent before the Tribunal and owned by the 9th respondent herein came in a rash and negligent manner and hit the motorcycle. The deceased sustained fatal injuries and he succumbed to injuries on 12.06.2009. The appellant herein, the insurer of scooter involved in the accident, alone contested the matter.

2. The Tribunal by award dated 14.02.2014 awarded a total compensation of Rs.8,43,100/-. On a finding that the accident

occurred due to the rash and negligent riding of the scooter by its rider, the appellant/insurer of the scooter was directed to pay the amount of compensation to the claimants. However, the appellant/insurer was given the right of recovery from the 9th respondent herein, who is the owner of the scooter, since the rider of the scooter was not holding a valid driving licence to ride a scooter on the date of the accident. It is challenging the Award passed by the Tribunal, the appellant/insurer is before this Court, mainly contending that the compensation awarded by the Tribunal under different heads is on the higher side.

3. We heard the arguments of the learned counsel for the appellant/insurer and also the learned counsel appearing for respondents 1 to 8, the claimants before the Tribunal.

4. The sole issue that arises for consideration in this appeal is as to whether any interference is required with regard to the amount of compensation awarded by the Tribunal under different heads.

5. The claimants contended that the deceased was a graduate and was studying for Computer Course at Kannur. The Tribunal, considering the fact that the deceased was a student and

a non-earning member, fixed his monthly income notionally at Rs.3000/-. The fact that, at the time of accident the deceased was an able bodied graduate aged 23 years is not in dispute. Considering the fact that the accident occurred in the year 2009, we deem it appropriate to refix the notional monthly income of the deceased at Rs.4000/- per month. Since the deceased was bachelor, the Tribunal ought to have deducted one half of the notional income towards his personal expenses. After deducting one half towards personal expenses, Rs.2000/- can be taken as the multiplicand and applying the multiplier of 18, the compensation payable to respondents 1 to 8 under the head loss of dependency will come to **Rs.4,32,000/-** [4000 x 50% x 12 x 18], instead of Rs.7,77,600/- awarded by the Tribunal.

6. However, we notice that, the Tribunal has not awarded any amount towards pain and suffering and bystander expenses. Considering the fact that the deceased sustained fatal injuries on 05.06.2009 and he succumbed to injuries only on 12.06.2009, we deem it appropriate to grant a sum of **Rs.10,000/-** towards pain and sufferings and a further sum of **Rs.7,000/-** towards bystander expenses.

7. The Tribunal awarded a sum of Rs.1,000/- towards damage to clothing, Rs.2,500/- towards transportation charges and Rs.37,000/- towards medical expenses. Similarly, under the head funeral expenses the Tribunal awarded a sum of Rs.25,000/-. The compensation awarded by the Tribunal under the above heads represents only a just and reasonable compensation, which warrant no interference in this appeal.

8. We also find that no amount was granted by the Tribunal under the head loss of love and affection. The 1st respondent is the mother of the deceased and respondents 2 to 7 are his siblings. They lost the love and affection of the deceased, who was aged only 23 years at the time of the accident. Considering the facts and circumstances of the case, we deem it appropriate to grant a sum of Rs.25,000/- each to the claimants towards loss of love and affection. As such, respondents 1 to 8 will be entitled for a sum of **Rs.2,00,000/-** under the aforesaid head.

9. In the result the appeal is disposed of, modifying the Award passed by the Tribunal by refixing the total compensation payable as **Rs.7,14,500/-** as against **Rs.8,43,100/-** awarded by the Tribunal, together with interest at the rate of 8% per annum

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from the date of petition till realization.

By order dated 19.02.2015 the appellant/insurer was directed to deposit 50% of the award amount together with interest before the Tribunal within a period of two months and respondents 1 to 8 were permitted to withdraw the same. The appellant/insurer shall deposit the balance amount in terms of this judgment before the Tribunal within a period of one month from the date of receipt of a certified copy of this judgment.

In terms of the award passed by the Tribunal, the appellant/insurer will have the right to recover the amount of compensation paid to respondents 1 to 8 together with interest from the 9th respondent herein, the owner of scooter bearing registration No. KL 14/A 2228.

sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
ANIL K. NARENDRA,
JUDGE

kmd

/True copy/

P.A. to Judge