

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

MACA.No. 2482 of 2009 (A)

AGAINST THE AWARD IN OP(MV).No.759/2007 of MACT PALA DATED 04-03-2009

APPELLANTS/PETITIONERS:

1. P.J.JOSE, S/O. JOSEPH, PURAYIDATHIL HOUSE,
POONJAR NADUBHAGOM VILLAGE, VADAKKEKKARA KARA,
KOTTAYAM DIST.
2. ANNAKUTTY JOSEPH, W/O. P.J.JOSE,
PURAYIDATHIL HOUSE, POONJAR NADUBHAGOM VILLAGE,
VAKAKKEKKARA KARA, KOTTAYAM DIST.
3. JIMSON S/O. P.J.JOSE DO-DO-
4. JEENA D/O. DO-DO-

BY ADVS.SRI.BABY THOMAS
SRI.GIGIMON ISSAC

RESPONDENTS : RESPONDENTS :

1. NIYAS S/O. ABDUL KHADER,
VANCHANKAL HOUSE, NADACKAL.P.O., ERATTUPETTA,
KOTTAYAM DIST. PIN-686124 (OWNER).
2. MOHANAN S/O. NARYANAN,
KULANTHINKAL HOUSE, TEEKOY VILLAGE TEEKOY KARA,
TEEKOY.P.O., KOTTAYAM DIST. PIN-686580.
3. UNITED INDIA INSURANCE CO. LTD.,
REPRESENTED BY BRANCH MANAGER, THODUPUZHA.
4. C.K.SIDDIQUE, CHEENIKAL HOUSE,
UDUMBANNOOR.P.O. IDUKKI.

R3 BY ADV. SRI.P.V.JYOTHI PRASAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(CR)

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

M.A.C.A.No.2482 of 2009

Dated this the 17th day of December, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal preferred by the claimants is in respect of the inadequacy of the compensation awarded by the Tribunal in connection with the sad demise of the son of the appellants 1 and 2 and the sibling of the appellants 3 and 4 in a road traffic accident occurred on 11.5.2007.

2. The deceased, who was pursuing his studies for the 2nd year MBA in the Guruvayoorappan Institute of Management in Coimbatore, was proceeding along the road on a motor cycle bearing No.KL-05/K-7553. While so, when he reached the place of occurrence, a jeep bearing No.KL-7/D-2070 owned, driven and insured by the respondents 1, 2 and 3 respectively before the Tribunal knocked him down causing fatal injuries leading to his death occurred on the same date. This was sought to be compensated by filing the claim petition before the Tribunal.

3. The matter was not contested by any of the respondents except the insurance company. No violation of policy/statutory condition was pointed out and the matter was contested only on general grounds. The evidence adduced before the Tribunal consists of the deposition of PWs.1 and 2 and documents marked as Exts.A1 to A21 produced from the part of the claimant; whereas Ext.B1 copy of the scene mahazar was produced from the part of the respondent Company. Based on the materials on record, a total compensation of ₹4,76,250/- was awarded by the Tribunal, which was directed to be satisfied with interest @ 9% per annum from 10.9.2007 till realisation, plus cost. This is sought to be enhanced by way of this appeal.

4. Heard the learned counsel for the appellant as well as the learned counsel appearing for the insurance company.

5. During the course of hearing the learned counsel for the appellants points out that, even though the Tribunal has reckoned the notional monthly income as ₹10,000/- and has given due consideration to the future prospects, reckoning the same as ₹15,000/-, only a sum of ₹12,500/- was taken as the

monthly income to work out the compensation for loss of dependency and $\frac{2}{3}$ rd has been deducted as the probable contribution to the family. Similarly, in spite of the fact that the deceased was aged 23 years, multiplier of '12' alone has been adopted, which is not correct or sustainable in view of the law declared by the Apex Court on many an occasion, submits the learned counsel. It is also pointed out that the amounts awarded by the Tribunal under different heads are quite on the lower side, which requires to be boosted up. The learned counsel further submits that absolutely for no reason, deduction to an extent of 25% has been made by the Tribunal stating that the deceased was not wearing a 'Helmet' and hence interference is sought for under this head as well.

6. The learned counsel appearing for the insurance company submits that the consequence of non-wearing of the Helmet and the course that could be followed by the Tribunal in apportioning negligence had come up for consideration before a Division Bench of this Court and as per the judgment reported in **Siby Paul v. Praveen Kumar (2009 (1) KLT 322)** it has been

held that it could be raised as a defence from the part of the insurance company to apportion the liability to an appropriate extent. The Tribunal, in the award, has referred to the instance of non-wearing of the 'Helmet' leading to the death of the deceased and in turn, has fixed 25% contributory negligence on the part of the rider. No other aspect was discussed by the Tribunal in the award. We find it difficult to agree with the proposition that non-wearing of 'Helmet', though an offence under the relevant provisions of the M.V.Act, could be taken as a ground to fix contributory negligence on the part of the rider. What is to be considered with regard to the apportionment of negligence is whether the party concerned had any role/part in causing or contributing to the accident. In other words, the consequence pursuant to the accident is not a circumstance to be weighed for fixation of negligence in causing the accident. With regard to the non-wearing of 'Helmet' and resultant death because of the head injury, it is only a 'consequence' after the accident. Because of the non-wearing of 'Helmet', the injury sustained to the head became fatal, leading to the death of the deceased. It is true

that, had the deceased been wearing a 'Helmet', probably his life could have been saved and the gravity of the injury would not have been this much severe, to have resulted in the death of the deceased. But the consequence because of the non-wearing of 'Helmet' was not the reason for knocking down the rider of the motor cycle by the driver of the jeep which was coming from the opposite side and this being the position, negligence cannot be fixed on the shoulders of the rider of the vehicle merely for not wearing the 'Helmet'. The question is whether the matter should be referred to a Full Bench in view of the decision cited across the Bar i.e., **Siby Paul v. Praveen Kumar (2009 (1) KLT 322)**.

7. During the course of hearing, it is brought to the notice of this Court by the learned counsel for the respondent/insurance company that the accident was actually on the wrong side of the rider of the motor cycle. At the time of accident the rider of the motor cycle had virtually crossed the middle line, whereas the jeep which was coming from the opposite side was maintaining the correct side of the road. We have perused the relevant records. It is revealed from the

materials on record that the road is lying East-West. The motor cycle was proceeding from the West to the East and the jeep was coming from the opposite side. The road is having a total width of 6.04 metres and the accident was at a spot of 3.24 metres from the Northern end of the road; which means, the motor cycle had already crossed the middle line of the road. In other words, the rider of the motor cycle was not maintaining his correct side and as such, there is contribution on his part in causing the accident. To put it more clear, the accident was not because of the non-wearing of 'Helmet' but because of the negligence on the part of the rider in keeping his side as well, and in such circumstances, the fixation of negligence to an extent of 25% on the part of the rider of the motor cycle is not liable to be deprecated under any circumstance, though non-wearing of 'Helmet' may not have any relevance in causing the accident. In the said circumstances, we do not find it necessary to cause the matter to be referred to larger bench.

8. The amounts awarded by the Tribunal under different heads are as given below:-

Schedule

Part I	₹
Transport to hospital	2,000/-
Funeral Expenses	3,000/-

Part II	₹
Pain and suffering	15,000/-
Loss of Love and affection	15,000/-
Loss of Estate	6,00,000/-
Total	6,35,000/-
Deduct 25%for contributory negligence	1,58,750/-
Balance	4,76,250/-

It is seen that the deceased was a 2nd year MBA student and the 'multiplicand' fixed by the Tribunal, reckoning ₹12,500/- per month as the notional income is also considering the future prospects, which does not require any interference. But the fact remains that only '12' has been adopted by the Tribunal as the multiplier, which on the basis of the age of the deceased (23 years) should have been '18'. We adopt '18' as the appropriate multiplier. Similarly, the claimants are the parents and the siblings of the deceased, who was a bachelor. Under such circumstances, only 50% could have been reckoned as the contribution to the family. On reworking the figures towards loss

of dependency in the above circumstance, it comes to $12,500 \times 12 \times 50/100 \times 18 \times 75/100$ (reckoning the contributory negligence) = ₹10,12,500/-. After giving credit to the sum of ₹6,00,000/- awarded by the Tribunal under this head, the balance comes to **₹4,12,500/-**.

9. It is seen that only a sum of ₹3,000/- has been awarded by the Tribunal towards funeral expenses and a sum of ₹15,000/- towards the loss of love and affection. The accident was in the year 2007 as mentioned already. Under similar circumstances involving an accident occurred in the year 2007, the Apex Court has made it clear that the amount payable towards loss of love and affection as well as the amount towards funeral expenses shall be ₹1,00,000/- and ₹25,000/- respectively, by virtue of law declared in **Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)]**. It is true that the said decision came to be considered by another Division Bench of this Court in **Valsamma v. Binu Jose [2014 (1) KLT 10]**, whereby it has been held that the amount payable under the said head is not automatic and that the same has to be with reference to the age

of the deceased and also to the age of the claimants as well. In the instant case, the deceased was aged 23 years. The claimants who are the parents of the deceased are aged 54 and 50 years respectively and the siblings are aged 22 and 24 years respectively. Even though the siblings were not the dependants, they also lost the love and affection of the deceased and in the above circumstance considering the total number of claimants, we find it appropriate to grant a sum of ₹1,00,000/- as awarded by the Supreme Court towards loss of love and affection. After giving credit to sum of ₹15,000/-, the balance comes to **₹85,000/-** under this head. Similarly, in respect of funeral expenses, we award a balance sum of **₹22,000/-**. The total of these three figures comes to **₹5,19,500/-** [4,12,500 + 85,000 + 22,000]. But by virtue of contributory negligence already fixed and upheld by this Court, to an extent of 25% on the part of the deceased rider, the amount requires to be reduced to an extent of ₹1,29,875/-. Thus, the total balance compensation payable comes to **₹3,89,625/-** which shall be satisfied with interest @ 9% per annum from 10.9.2007.

Since the policy is admitted, we direct the insurance company to deposit the said amount which shall be effected within one month from the date of receipt of a certified copy of this judgment.

The appeal is disposed of. No cost.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj

True copy

P.A to Judge