

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 29TH DAY OF OCTOBER 2015 7TH KARTHIKA, 1937

MACA.No. 1320 of 2008

AGAINST THE AWARD IN OPMV 496/2005 of MACT PALA DATED
29-03-2007

APPELLANT(S)/APPELLANTS:

1. USHA N.K., W/O. LATE MATHAI A.D.,
ALAKKATTUPARAMBIL (H) VALACHIRA P.O.,
KADUTHURUTHI.

2. MEGHA (MINOR) REPRESENTED BY NEXT FRIEND
USHA N.K., ALAKKATTUPARAMBIL (H) VALACHIRA P.O.
KADUTHURUTHI.

3. MAHIMA (MINOR) REPRESENTED BY NEXT
FRIEND USHA N.K., ALAKKATTUPARAMBIL (H)
VALACHIRA P.O. KADUTHURUTHI.

4. DEVASSIA @ KOCHUKUNJU, S/O. OUSEPH
ALAKKATTUPARAMBIL (H) VALACHIRA P.O.,
KADUTHURUTHI. (DIED)

5. MARIYAKKUTTY @ SHYAMALA, W/O. DEVASIA
ALAKKATTUPARAMBIL (H) VALACHIRA P.O. KADUTHURUTHI.

4TH APPELLANT DIED AND HENCE APPELLANTS 1 TO 3
ARE DECLARED AS THE REMAINING DEPENDENTS OF THE
4TH APPELLANT AS PER ORDER IN I.A.NO.3822/15
DATED 29/10/2015

BY ADVS.SRI.T.J.MICHAEL
SRI.P.NOOR ZAMEER

RESPONDENT (S/RESPONDENTS) :

1. MANOJ MATHEW, S/O. MATHEW,
PALLIKKARA HOUSE, CHEPPUKULAM BHAGAM,
KUDAPULAM KARA,
VELLILAPPALLIL VILLAGE, KOTTAYAM DISTRICT.

2. RAJU ABRAHAM, S/O. ABRAHAM, MANGATHU (H)
AMANAKARA P.O., RAMAPURAM, KOTTAYAM DIST.

3. THE ORIENTAL INSURANCE CO. LTD.,
REPRESENTED BY BRANCH MANAGER,
THODUPUZHA-685 584.

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN
FINALLY HEARD ON 29-10-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
K. HARILAL, JJ.**

M.A.C.A. No.1320 of 2008

Dated this the 29th day of October, 2015

JUDGMENT

Harilal, J.

The appellants are the legal heirs, the wife, children, father and mother respectively of the late A.D. Mathai, who died in a road traffic accident. They filed a claim petition under Sec.166 of the Motor Vehicles Act, claiming compensation for the death of the said Mathai. According to the appellants, on 29/4/2005 at about 7 p.m., the said Mathai was riding his motorcycle bearing Registration No.KL-4/A-9101 through the M.C. Road and when he reached at Kuravilangad, a bus bearing Registration No.KL-5/P-6552 driven by the 1st respondent coming from

behind, hit the motorcycle on which he was travelling and as a result of hit, he sustained fatal injuries. Though immediately he was taken to the Medical College Hospital, Kottayam, after the accident, he succumbed to the injuries at 10.30 p.m. on the very same day. The accident was caused by the rash and negligent driving of the vehicle by the 1st respondent. The bus was owned by the 2nd respondent and insured with the 3rd respondent/Insurance Company, at the time of accident. Therefore, the respondents are jointly and severally liable to compensate the appellants for the irretrievable loss caused by the death of said Mathai.

2. The 2nd respondent remained ex parte. The 1st respondent filed a written statement denying the allegations of rashness and negligence levelled against him. According to him, the accident occurred solely due to the negligence of the deceased Mathai and there was no negligence on his part. He disputed

the monthly income of the deceased, nature of injuries and the quantum of amount claimed. He had a valid driving licence at the time of accident.

3. The 3rd respondent filed a written statement admitting the insurance coverage of the bus; but denied the cause of accident alleged in the petition. This respondent also contended that the accident occurred solely due to the negligence on the part of the deceased Mathai and there was no negligence on the part of the 1st respondent.

4. The evidence consists of Exts.A1 to A10 and no oral evidence had been adduced either by the appellants or the respondents. After analysing the evidence on record, the Tribunal found that the accident was caused by the rash and negligent driving of the bus by the 1st respondent and thereby, the 2nd respondent is vicariously liable to give compensation to the appellants and 3rd respondent is liable to indemnify the 2nd respondent. The Tribunal passed

the impugned award granting ₹5,07,880/- to the appellants as compensation. The inadequacy of the quantum of compensation is challenged in this appeal.

5. The learned counsel for the appellants advanced arguments highlighting the inadequacy of the quantum of compensation determined under the heads of loss of dependency, loss of consortium and loss of love and affection. It is also contended that the Tribunal went wrong by taking the net salary per month only, when Ext.A7 certificate shows a gross salary of ₹7,729/-. According to him, the Tribunal ought to have taken the gross salary for fixing the monthly income to reckon the loss of dependency.

6. Per contra, the learned counsel for 3rd respondent advanced arguments to justify the quantum of compensation determined under the above referred heads. According to the learned counsel, the net income alone is liable to be reckoned for fixing the loss of dependency.

7. The short question that arises for consideration is, whether the appellants are entitled to get enhancement in the quantum of compensation determined under any of the heads. Admittedly, the late Mathai was aged 46 years at the time of his death and he was working as a Police Constable in the Department of Police. Ext.A7 salary certificate shows that he was getting an amount of ₹7,729/- as gross salary per month. We are unable to agree with the reckoning of the net income only for calculating the loss of dependency, when Ext.A7 salary certificate shows ₹7,729/- as his gross salary. We are of the opinion the total amount which he earned per month, including the deductions, is also liable to be taken for fixing his monthly earnings. So, we re-fix ₹7,729/- as his monthly income instead of ₹5,540/-. So also, considering the future prospects, 30% of the salary must be added to the monthly income shown in Ext.A7 and $\frac{1}{3}^{\text{rd}}$ of the said income must be deducted for his

future personal expenses, if he had been alive. Thus, the appellants are entitled to get ₹10,40,000/- for loss of dependency ($10000 \times 12 \times 13 \times \frac{2}{3}$) and balance payable under this head is ₹5,77,120/- (₹10,40,000/- minus ₹4,62,880/-).

8. Coming to loss of love and affection and loss of consortium, it is seen that the Tribunal has awarded ₹15,000/- each under those heads. Considering the fact that the deceased was aged 46 years and the appellants 2 and 3 are the minor children only at the time of death, the amount determined under the above heads are inadequate, the same would stand enhanced to ₹50,000/- each. Thus, the appellants are entitled to get ₹35,000/- each more towards loss of pain and suffering and loss of consortium.

9. Thus, the appellants are entitled to get an amount of ₹6,47,120/- in addition to the amount granted under the impugned award. The appellants are entitled to get interest at the rate of 8% per

annum from 11/7/2005, till realisation of the award amount. The 3rd respondent is directed to deposit the total compensation within a period of one month from the date of receipt of a copy of this judgment.

This appeal is disposed of accordingly.

Sd/-

(P.R. RAMACHANDRA MENON, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge