

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

MACA.No. 2700 of 2009 ()

AGAINST THE AWARD IN OPMV 967/1995 of M.A.C.T., NEYYATTINKARA
DATED 30-06-2009

APPELLANT(S)/RESPONDENT No.5 :-

THE MANAGER, NEW INDIA ASSURANCE COMPANY LTD.,
SREE HARI BUILDING, NEAR BUS STAND
NEYYATTINKARA.

BY ADVS.SRI.KKM.SHERIF
SRI.A.A.ZIYAD RAHMAN

RESPONDENT(S)/PETITIONERS 1 TO 3 & RESPONDENTS 1 AND 4 :-

1. JEMONSON, RAVELI HOUSE,
KADAVATTARAM, NEYYATTINKARA P.O., NEYYATTINKARA.
2. K.PUSHPAM, RESIDING AT RAVELI HOUSE,
KADAVATTARAM, NEYYATTINKARA P.O., NEYYATTINKARA.
3. J.P.VINCENT LAL, RESIDING AT
RAVELI HOUSE, KADAVATTARAM, NEYYATTINKARA P.O.
NEYYATTINKARA.
4. JUSTIN DEVRAJ, ABHILASH COTTAGE,
VELANVILLU, KEEZHKOLLA DESOM, CHENKAL VILLAGE.
5. N.PONNAYYAN, MINI SADANAM,
KATTACHALKUZHI, VENGANOOR P.O., NEYYATTINKARA.

R1 TO 3 BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

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

M.A.C.A. No.2700 of 2009

Dated this the 22nd day of January, 2015

J U D G M E N T

Ramachandran Nair, J.

The insurance company is the appellant herein. It is a case of death of the son of respondents 1 and 2 Sri.Biji Shelli. He was aged 21 years at the time of the accident and he was working as a lorry cleaner. The accident occurred on 5.4.1995 while the lorry was being plied through Viangamuri - Thekke Manathala public road. It appears that on seeing another lorry coming from the opposite direction, the driver took the lorry to the extreme left side of the road. It caused the lorry to come into contact with an electric live wire and the cabin came into contact with it. The deceased was electrocuted.

2. We have heard the learned counsel for the insurance company and the learned counsel for the claimants.

3. The other party respondents have not appeared in spite of receipt of notice. After considering various aspects including the evidence, both oral and documentary, the

Tribunal awarded a total amount of ₹2,76,500/-.

4. The application was filed under Sec.163A of the Motor Vehicles Act. Therefore, towards dependency, ₹16,000/- with a multiplier of 17 has been taken.

5. In the appeal mainly the contest is regarding the multiplier adopted and the liability of the insurance company for payment of interest during the period when the application for compensation was dismissed for default and upto the date of restoration. It is submitted by the learned counsel for the appellant that the multiplier adopted by taking the age of the parents is the correct one.

6. Learned counsel for the respondents submitted in the light of the recent decisions of the Supreme Court, the same is not the correct method.

7. In the light of the decision of the Apex Court in **Amrit Bhanu Shali Others v. National Insurance Co. & others** [2012 ACJ 2002], we reject the contention of the learned counsel for the appellant. The age of the deceased has to be taken for adopting correct multiplier. With regard to the liability for payment of interest, it is submitted that the

application for compensation was filed in the year 1995 and it was dismissed for default on 10.1.2000 and restored on 2.5.2008. The insurance company was impleaded by order dated 30.8.2008.

8. Now the award shows that the interest is granted only at the rate of 7.5% from 15.11.1995, the date of application. Learned counsel for the claimants submitted that the insurance company has been allowed to recover the amount from the first respondent and therefore, the direction to pay interest do not require any modification. Having regard to the fact that the application was dismissed on 10.1.2000 and it was restored only on 2.5.2008, we are of the view that as far as the said period is concerned, the insurance company has to be exonerated from payment of interest. Hence, we allow the claimants to recover it from the owner of the vehicle. We are not interfering with the liability of the insurance company for payment of interest upto 10.1.2000 and from 2.5.2008 onwards. The award of the Tribunal will stand modified to that extent. We direct the insurance company to deposit the amount within a period of three

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months from the date of receipt of a copy of this judgment, since it is submitted by the learned counsel for the claimants that no amount has been deposited so far.

9. We notice that the interest granted is only at the rate of 7.5% per annum. In view of the Apex Court judgment in **Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.** [(2009) 4 SCC 513], we award interest at the rate of 9% per annum. We also direct that on deposit of the amount, the claimants will be entitled to withdraw the amount, but in the proportion allowed by the Tribunal. This is so because the accident occurred in the year 1995.

This appeal is disposed of as above. No costs.

Sd/-
T. R. RAMACHANDRAN NAIR
JUDGE

Sd/-
P.V.ASHA
JUDGE