

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

MACA.No. 3065 of 2014 ()

(AGAINST THE AWARD IN OPMV 1113/2009 of M.A.C.T., KOZHIKODE
DATED 26-03-2010)

APPELLANTS/RESPONDENTS:

1. KRISHNANKUTTY AGED 64 YEARS
S/O.KUTTAYI, RESIDING AT KUZHIKKATTUKUZHIYIL HOUSE
ARAPPUZHA, PANTHEERANKAVU (POST), KOZHIKODE

2. CHANDRAMATHY, AGED 58 YEARS,
W/O.KRISHNANKUTTY
RESIDING AT KUZHIKKATTUKUZHIYIL HOUSE, ARAPPUZHA
PANTHEERANKAVU (POST), KOZHIKODE.

3. LISHA, D/O.KRISHNANKUTTY, AGED 35 YEARS,
RESIDING AT KUZHIKKATTUKUZHIYIL HOUSE, ARAPPUZHA
PANTHEERANKAVU (POST), KOZHIKODE.

4. SAJITH, S/O.KRISHNANKUTTY, AGED 33 YEARS,
RESIDING AT KUZHIKKATTUKUZHIYIL HOUSE, ARAPPUZHA
PANTHEERANKAVU (POST), KOZHIKODE

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S) :

1. THASLEENA
W/O.BEERANKUTTY, 7/34, KURUNGOTTUMMAL HOUSE
VELLAYIKODE, PANTHEERANKAVU POST, KOZHIKODE-673019

2. ABDUL MAJEED.K.M.,
S/O.ABOOBACKER, BARUBOYIL HOUSE, PUTHUKODU POST
RAMANATTUKARA (VIA), MALAPPURAM-673633.

3. THE NEW INDIA ASSURANCE CO.LTD.,
DIVISIONAL OFFICE, SILVER PLAZA BUILDING, I.G.ROAD
KOZHIKODE-673001

BY ADV. SMT.P.K.SANTHAMMA

BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

.....
M.A.C.A.No.3065 OF 2014
.....

Dated this the 4th December, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Inadequacy of compensation awarded by the Tribunal in respect of the death of a person aged 26 years is under challenge in this appeal, seeking for enhancement. The accident was on 02.05.2009, when the deceased was riding a motor cycle bearing No.KL.11/S.754, which was knocked down by a bus bearing No.KL.11.S/4527 causing fatal injuries.

2. Existence of valid policy was admitted. No evidence was adduced from both the sides, but for the documents produced as Exts.A1 to A6 from the part of the claimants. The deceased was stated as a driver having a valid driving licence. But no evidence was adduced regarding occupation or income. The Tribunal fixed the notional monthly income at Rs.3000/-, fixing negligence solely on the part of the driver of the bus and a total compensation of **Rs.2.18 lakhs** was awarded with interest at

the rate of 7% per annum from the date of petition.

3. Heard the learned Counsel for the claimants as well as the learned Counsel appearing for the Insurance Company

4. It is true that no oral deposition was made by anybody to prove the avocation or income. But the fact remains that Exts.A8 series licence was produced from the part of the claimants to substantiate the pleading that the deceased was working as a driver. It has also to be borne in mind that the accident occurred was in the year 2009. No evidence was adduced from the part of the respondents to the contrary with regard to the factual particulars pleaded and sought to be established with reference to Ext.A6. In the above circumstance, we find it fit and proper to reckon Rs.5000/- as notional monthly income and to award compensation accordingly.

5. The amounts awarded by the Tribunal as given in paragraph 12 are in the following terms:

Head	Amount awarded (Rs.)
Transport	1500
Damage to clothing	500

Head	Amount awarded (Rs.)
Pain and suffering	10000
Funeral expenses	3000
Loss of love and affection	5000
Loss of estate	Nil
Loss of consortium	Nil
Loss of dependency	198000
TOTAL	218000

6. The claim was preferred by the parents and siblings and under such circumstance, only 50% was taken as contribution to the family for fixing the loss of dependency. We find nothing wrong in this regard, but for the necessity to rework the compensation based on the enhanced monthly income. It is seen that the Tribunal had reckoned the multiplier of '11' based on the age of the parents. By virtue of settled position of law, as made clear by the Apex Court on many an occasion, the multiplier has to be fixed based on the age of the deceased. In the instant case, since the deceased was aged 26, the proper multiplier should have been '17'. On effecting the calculation as

above, it comes to Rs.5000 x 12 x 50 x 17/100=510000/-. After giving credit to the sum of Rs.1,53,000/-, the balance towards loss of dependency comes to **Rs.357000/-**. It is awarded accordingly. Only a sum of Rs.5000/- has been awarded towards loss of love and affection. Going by the mandate of the decision in **Rajesh vs. Rajbir Singh [2013 (3) KLT 89 (SC)]**, which was subsequently referred to and explained by another Division Bench of this Court in **Valsamma vs. Binu Jose (2014(1)KLT 10)**, we find that the quantum of compensation payable towards loss of love and affection requires to be fixed with reference to the age of the deceased as well as the age of claimants. Considering the facts and circumstances, we fix the same as Rs.50000/- This will result in a balance payment of **Rs.45000/-**. Only a sum of Rs.3000/- has been awarded by the Tribunal towards funeral expenses. In view of the very same decision of the Apex Court cited above, it should have been Rs.25000/-, under which circumstance, we order a balance compensation of **Rs.22000/-** under this head as well. The total balance compensation payable comes to **Rs.4,24,000/-**, which shall be

satisfied with interest at the rate of 9% per annum from the date of petition filed before the Tribunal. However, it is to be noted that, this Court while condoning the inordinate delay of 1575 days in filing the appeal; by order dated 18.08.2015, it was made clear therein that the delay would stand condoned, subject to the rider that if any enhancement was ordered, the appellants would not be entitled to get interest for the period of delay. We make the said order absolute and hold that the appellants will not be entitled for interest in respect of the above period of delay. Since policy is admitted, we direct the Insurance Company to deposit the amount within one month from the date of receipt of a copy of the judgment.

**P.R. RAMACHANDRA MENON,
JUDGE**

**ANIL K. NARENDRA,
JUDGE**

The figures “**1,53,000/-, 3,57,000/- and 4,24,000/-**” occurring in the 2nd, 3rd and last lines at page 4 of the judgment dated 04/12/2015 in M.A.C.A.No.3065/2014 are corrected as “**1,98,000/-, 3,12,000/- and 3,79,000/-**” respectively, vide order dated 04/03/2016 in I.A.304/2016 in M.A.C.A.No.3065/2014.

Sd/- Registrar (Judicial)

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