

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

MACA.No. 1668 of 2008

AGAINST THE AWARD IN OPMV 3248/2002 of MACT,THRISSUR,
DATED 16-01-2008

APPELLANTS/PETITIONERS:-

1. M.K.FRANCIS, S/O MENACHERY,
KUNHIPALLY, AGED 59 YEARS, MANNUTHY P.O.,
OLLUKKARA VILLAGE, THRISSUR TALUK.
2. ANNIE FRANCIS, W/O FRANCIS
MENACHERY, OLLUKKARA VILLAGE, THRISSUR TALUK.
3. NOBY MENACHERY, S/O FRANCIS MENACHERY,
DO....DO.....
4. NEBY MENACHERY, S/O FRANCIS,
MENACHERY, AGED 25 YEARS, DO....

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENT(S)/RESPONDENTS:

1. M.S. ANANDAN, S/O MALAPPURATHU VEETTIL
SUGATHAN, KOLAZHY P.O., KOLAZHY VILLAGE,
THRISSUR TALUK. (DELETED)
2. M/S ORIENTAL GENERAL INSURANCE CO. LTD.,
THANE P.O., 3RD FLOOR, ARJUN TOWERS,
GOKHALE ROAD, NAPADA, THANE 400 602.

RESPONDENT NO.1 IS DELETED FROM ARRAY OF PARTIES AT
THE RISK OF THE APPELLANT/PETITIONER AS PER ORDER DATED
5/9/2012 IN I.A.NO.3313/11 IN MACA NO.1668/08.

R2 BY ADV. A.R.GEORGE
BY ADV. ADV.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP
FOR ADMISSION ON 06-10-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

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

M.A.C.A. No. 1668 of 2008

Dated this the 6th day of October, 2015

JUDGMENT

Ramachandra Menon, J.

The loss sustained due to the death of the son of the appellants 1 and 2 and siblings of the appellants 3 and 4 assessed and ordered to be satisfied to an extent of ₹2,27,000/- is sought to be enhanced in this appeal stating that the amounts awarded by the Tribunal are quite inadequate in all respects.

2. The accident occurred on 5/7/2002 when the deceased was knocked down from the motorcycle ridden by him with a pillion, by a tanker lorry bearing Registration No.MH 04/AL-4192 owned and driven by the 1st respondent which was insured by the 2nd

respondent. Pointing out that the deceased was doing some business and was earning a substantial income, the claim petition was filed seeking for a total compensation of ₹20 lakhs. The claim petition preferred by the pillion rider in respect of the injuries sustained and numbered as O.P.No.3247/02 was also tried along with O.P.No.3248/02 preferred by the appellants. The evidence consists of Exts.A1 to A17 and nobody was examined from either side. On conclusion of the trial, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the lorry and proceeded to fix the liability accordingly.

3. Awarding the amounts under various heads, reckoning the notional income as ₹2,000/- and adopting the multiplier of '11', the Tribunal granted a total sum of ₹2,27,000/- which was directed to be satisfied with interest at the rate of 7% per annum from the date of petition i.e., 7/12/2002 till satisfaction. This, in turn, is under challenge by the

appellants seeking for enhancement.

4. Heard the learned counsel for the appellants as well as the learned counsel appearing for the Insurance Company.

5. The amounts awarded by the Tribunal under various heads as disclosed from paragraph-13 of the award are extracted below for convenience and reference:

Expense for transportation	-	₹	500.00
Expense for funeral	-		5,000.00
Compensation for pain and suffering	-		15,000.00
Compensation for dependency-			1,76,000.00
Damages to clothing	-		500.00
Compensation for loss of estate	-		15,000.00
Compensation for loss of love and affection	-		15,000.00

Total	-	₹	2,27,000.00
			=====

6. It is true that no evidence was adduced by the claimants to substantiate the business or income. However, the fact remains that the deceased was a youth of 26 years and going by the parameters fixed by the Apex Court, we find it proper to enhance the

notional income fixed by the Tribunal by 50% more, by making it as ₹3,000/- p.m. The multiplier to be adopted has to be with reference to the age of the deceased and going by the norms stipulated by the Apex Court in *Sarla Verma v. Delhi Transport Corporation* [2010 (2) KLT 802 (SC)], the same has to be '17'. At the same time, the contribution to the family has to be limited to 50%, it being a claim mainly preferred by the parents. In the above circumstance, the actual compensation payable under the head of loss of dependency comes to $3000 \times 12 \times \frac{1}{2} \times 17 = ₹3,06,000/-$, after giving credit to a sum of ₹1,76,000/- awarded by the Tribunal, the balance comes to ₹1,30,000/-.

7. The amount awarded by the Tribunal in respect of funeral expenses is enhanced to a sum of ₹10,000/-. After deducting the sum of ₹5,000/- awarded by the Tribunal, the balance comes to ₹5,000/-. Similarly, the loss towards love and affection granted to an extent of ₹15,000/- requires to be boosted upto ₹50,000/-, thus resulting in a balance

of ₹35,000/-, considering the date of accident and the money value and such other circumstances which are prevailing on the said date, thus the total balance compensation payable comes to ₹1,70,000/- (Rupees One lakh and seventy thousand only) which shall be satisfied with interest at the rate of 9% per annum from the date of the petition i.e., 7/12/2002 till satisfaction. Since the policy stands admitted, the amount shall be deposited by the respondent/ Insurance Company before the Tribunal 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)

Nan/ //true copy//

P.S. to Judge