

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 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

MACA.No. 1999 of 2008 ()

AGAINST THE AWARD IN OPMV 2553/2004 of M.A.C.T.,KOTTAYAM DATED 15-05-2008

APPELLANT(S)/APPELLANT/2ND RESPONDENT:

**NATIONAL INSURANCE CO.LTD.
KOTTAYAM.**

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENT(S)/RESPONDENTS/PETITIONERS & R1 & R2:

- 1. C.J.MARY, THADOM COTTAGE, HOSPITAL ROAD,
ATHIRAMPUZHA POST, KOTTAYAM.**
- 2. LEENA K. THOMAS -DO- -DO-**
- 3. ROBBIS K. THOMAS -DO- -DO-**
- 4. NOBBLE JOSPEH, LAPPALLY HOUSE,
SREEKANDAMANGALAM, ATHIRAMPUZHA VILLAGE.**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 11-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AD

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

M.A.C.A No. 1999 of 2008

Dated this the 11th day of September, 2015

JUDGMENT

P.R.RAMACHANDRA MENON,J

This appeal has been preferred by the insurer of the vehicle bearing No.KL5 G 760 challenging the award passed by the Motor Accident Claims Tribunal, Kottayam in OP(MV) 2553/04, whereby the liability has been mulcted upon the shoulders of the insurance company to satisfy the claim preferred under Section 163(A) of the M.V Act (in short 'the Act'), in spite of the fact that, it was a self accident, involving death of the rider of the motor cycle insured by the appellant.

2. The sequence of events reveals that the deceased, aged about 23 years and a B.Tech Student was proceeding on the motor cycle bearing registration No.KL-05/Q-0968 on 19.06.2004. While so, the motor cycle over turned, whereby serious injuries were caused to the rider who ultimately bid farewell to this world. This led to the claim petition preferred by the mother, sister and brother

of the deceased, seeking to have the amount quantified in terms of Section 163(A) of the Act.

3. The claim was sought to be resisted by the Insurance Company mainly contenting that, the claim petition was not maintainable in so far as the accident was only because of the rash and negligent riding of the motor cycle by the deceased himself. Being a self accident, such risk is not intended to be covered either under the statute or under the policy. However, without regard to the said contention the Tribunal awarded a total compensation of Rs.54,500/- and the same was directed to be satisfied with interest at the rate of 7% per annum and a cost of Rs.3,000/- which in turn is under challenge.

4. Despite the completion of service of notice, the claimants have not turned up. The learned Counsel for the appellant Insurance Company points out that the legal position stands settled in favour of the Insurance Company, by virtue of the decision rendered by the Apex Court as reported in **[2011 (4) KLT 821 (SC)] National Insurance Company Ltd. V. Sinitha** and also by the

subsequent full bench of this Court reported in **[2012 (2) KLT 132 (F.B)] Oriental Insurance Company Ltd. V. Joseph.** The decision rendered by the Apex Court reported in **[2011 (4) KLT 821 (SC)] National Insurance Company Ltd. V. Sinitha,** which was relied on by the full bench, was subsequently doubted and referred by a co-equal bench of the Supreme Court as per the decision reported in **[2013 (4) KLT 488 (SC)] United India Insurance Co.Ltd V. Sunil Kumar.** The question to be considered is whether any interference is required in the present case, in so far as the amount awarded by the Tribunal is only a sum of Rs.54,500/-.

5. On going through the contents of the award, it is seen that, though the claim was preferred under Section 163(A) of the Act, the Tribunal has not granted compensation in terms of the said provision or merely by following the structured formula under the second schedule. Though the deceased was a youth of 23 years, the Tribunal reckoning the notional income adopted the multiplier of '5' by virtue of the higher factor of the

mother. Accordingly, only a sum of Rs.50,000/- was awarded towards loss of dependency. The amounts awarded under other heads are also quite nominal. Under normal circumstances, in a case filed under Section 166 of the MV Act, the no fault liability payable under Section 140 of the Act itself will come to Rs.50,000/-. This being the position, this Court did not find fit and proper to invoke the jurisdiction of this Court to tilt the balance in any manner.

The appeal stands dismissed without interference, in view of the particular facts and circumstances.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE

Sd/-
K.HARILAL,
JUDGE

//TRUE COPY//

P.A TO JUDGE

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