

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 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

MACA.No. 2028 of 2008 ()

AGAINST THE AWARD IN OPMV 656/2002 of MACT, IRINJALAKUDA DATED
29-03-2008

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APPELLANT(S)/PETITIONERS:

1. AYYAPPAN, PANAMKOOTTATHIL HOUSE,
ANNANADU DESOM AND POST, KALLUR-VADAKUMMURI VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

2. THANKAMANI, W/O.AYYAPPAN, PANAMKOOTTATHIL HOUSE,
ANNANADU DESOM AND POST, KALLUR-VADAKUMMURI VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

3. RINITHA, D/O.AYYAPPAN,PANAMKOOTTATHIL HOUSE,
ANNANADU DESOM AND POST, KALLUR-VADAKUMMURI VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENT(S)/RESPONDENTS:

1. SIJI MATHAI.K., S/O.MATHAI,
KOOTTALA HOUSE, KODUVAZHANGA, NEERICODE PO.

2. SIJI, S/O.XAVIR, PAYYAPPILLY HOUSE,
POOPATHIKARA, POYYA VILLAGE, THRISSUR DISTRICT.

3. UNITED INDIA INSURANCE CO.LTD.,
R.S.ROAD, ALUVA.

R3 BY ADV. SRI.P.MURALEEDHARAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 22-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

OKB

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

M.A.C.A.No.2028 of 2008

Dated this the 22nd day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

The course pursued by the Tribunal in fixing the loss of dependency as Rs.1,80,000/- adopting a low notional income of Rs.1,500/- per month in respect of the deceased is sought to be challenged in this appeal. This is a case where the accident occurred on 24.3.2000 when there was a collision between the motorcycle ridden by the deceased and another motorcycle bearing No.KL-8/N-1753. Because of the fatal injuries resulted, the deceased lost his eye which led to the claim petition preferred by the parents and sister of the deceased by way of O.P.(MV) No.656/2002.

2. The claim petition was in fact preferred under Section 163A. The same was sought to be resisted by the Insurance Company by raising general contentions apart from the contention that the 2nd respondent was

having no valid driving licence at the time of accident (which has been subsequently found against the Insurance Company). Referring to the extract of School Admission Register produced as Annexure-A4, the Tribunal observed that the age of the deceased was 18 years. It was also observed that absolutely no material was produced with regard to the job or income of the deceased and in the said circumstance, a sum of Rs.1,000/- per month was taken as the notional income for the purpose of assessing the loss of dependency. Also with reference to the age of the parents, the multiplier was reckoned as 15, placing reliance on the decisions rendered by the Apex Court in the decision in New India Assurance Co. Ltd. v. Shanti Patak and others [2007 ACJ 2188] and also in the decision in Oriental Insurance Company Ltd. v. Said Ibrahim and others [2007 ACJ 2816]. Accordingly, the loss of dependency was calculated and granting amounts under other relevant heads, the total compensation payable under Section 163A was fixed as to be Rs.1,86,150/-.

3. The Tribunal observed that the licence of the 2nd respondent was produced, which shows that the 2nd respondent was permitted to ride the motorcycle without gear, as evident from Ext.B1. But, since Ext.B2 Policy did not show the engine capacity of the motorcycle, the Tribunal observed that there was nothing to show that it was a motorcycle with gear and accordingly the liability was mulcted upon the Insurance Company. The compensation was ordered to be satisfied with interest @ 7% per annum from the date of petition till realisation.

4. Heard the learned counsel for the appellants as well as the learned counsel appearing for the Insurance Company. Since the policy is admitted, it is not necessary to issue further process to the respondents 1 and 2 and the same stands dispensed with, more so when the delay was condoned after completing service of notice to the said respondents as well.

5. After hearing both the sides and also after considering the materials discussed by the Tribunal

and further that the deceased was an able bodied youth of 18 years, we find it fit and proper to reckon the monthly income as Rs.2,500/–, as on the date of accident. The loss of dependency is worked out accordingly. On working out the compensation based on the multiplier of 16 as provided in the II Schedule, which is to be made use of for awarding compensation under Section 163A, the amount payable comes to Rs.3,20,000/– (2500 x 12 x 2/3 x 16). After deducting Rs.1,80,000/– awarded by the Tribunal, the balance payable under this head comes to Rs.1,40,000/– (Rupees One lakh and forty thousand only). The same is awarded, which shall be satisfied with interest @ 9% per annum from the date of filing the petition till satisfaction. Since the policy is admitted, the Insurance Company is directed to effect the deposit within one month.

Sd/–

P.R. RAMACHANDRA MENON, JUDGE

Sd/–

K. HARILAL, JUDGE

okb.