

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA**

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

MFA.No. 1253 of 2001(B)

OPMV.152/1997 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM

APPELLANTS/PETITIONERS IN THE OP MV NO. 152/97:

1. **SAKKEENA, W/O. LATE ENTHEEN,
AGED 28 YRS,**
2. **SABIRA (MINOR), D/O. LATE ENTHEEN, AGED 7 YRS.**
3. **JALALUDHEEN (MINOR), D/O. LATE ENTHEEN, AGED 5 YRS.**
4. **SAMEERA (MINOR), D/O. LATE ENTHEEN, AGED 2 YRS.**

**(APPELLANTS 2 TO 4 MINORS, REP. BY THEIR GUARDIAN
NEXT FRIEND AND MOTHER SAKKEENA IST APPELLANT)**

**(APPELLANTS RESIDE AT POONKATTIL VEEDU AT POILUR IN
VATANAMKURUSSI AMSOM IN OTTAPALAM TALUK)**

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS/RESPONDENT IN OP MV

1. **RADHAKRISHNAN C. (FATHER'S NAME AND AGE NOT KNOWN TO THE
PETITIONER) RESIDING AT VIJAYAMANDIRAM, KOOTTANAD,
PIN 679 533, OTTAPALAM TALUK, PALAKKAD DIST.
(DRIVER OF MINI LORRY KL-9C/3393) DRIVING LICENCE NO. 536/87
BADGE NO. 184/88 VALID UP TO 25/11/97.**
2. **P. SATHYAN, (FATHER'S ANME AND AGE NOT KNOWN TO THE PETITIONER)
THANNIKKATTIL HOUSE, ALIKKARA POST, CHALISSERY, PIN 679 535,
OTTAPALAM TALUK, PALAKKAD DIST. (OWNER OF MINI LORRY NO.
KL-9/C/3393)**
3. **THE UNITED INDIA INSURANCE CO. LTD.,
5TH BRANCH, COIMBATORE, 641 002 (INSURER OF MINI LORRY
KL-9/C/3393).**

**BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL --- R3
SMT.P.A.REZIYA**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No.1253 of 2001

Dated this the 31st day of October, 2007

Judgment

Koshy,J.

First appellant at the young age of 28 lost her husband due to fatal injuries sustained in a motor accident on 19.7.1996. She along with three young children aged 7, 5 and 2 years and aged mother of the deceased filed application for compensation for an amount of Rs.10,00,000/-. The tribunal found that the accident occurred due to the negligence of the first respondent driver of the vehicle which was owned by the second respondent and insured by the third respondent insurance company, but, granted a compensation of Rs.2,48,564/- only. Only quantum of compensation is disputed in this appeal.

2. According to the claimants, the deceased was conducting a furniture shop and was earning Rs.10,000/- per month. Ext.A8 account book of the deceased maintained in the State Bank of India and Ext.A12 copy of the certificate of registration were produced to show that he was conducting a shop. According to the

claimants, the amount he was receiving monthly is reflected in the above account. It is true that claimants were not able to prove the actual income earned by the deceased, but, at the same time, in 1994, income of a non-earning person was fixed as Rs.1,250/- per month (Rs.15,000/- per year) as per the second schedule. Deceased was not a non-earning person. The accident occurred in 1996. He was maintaining a family consisting of his wife, three children and mother. Taking all these into account, we are of the view that at least Rs.3,000/- ought to have been fixed as monthly income and one-third has to be deducted and for calculation of compensation Rs.2,000/- should have been fixed as loss of monthly dependency. The tribunal has taken 16 as the multiplier as the deceased was aged 39 taking guidance from the second schedule. In this connection, we refer to the three-member Bench decision of the Apex Court in Smt. Supe Dei and others v. M/s. National Insurance Company Limited and another (JT 2002 (Suppl.1) SC 451) and recent decision of the Supreme Court in Abati Bezbaruah v. Deputy Director General, Geological Survey of India and another ((2003) 3 SCC 148) and A.P.S.R.T.C. v. M. Pentaiah Chary (2007 AIR SCW 5689) wherein it was held that in the absence of exceptional circumstances, multiplier system in the second schedule of the Motor Vehicles Act

should be followed for calculating compensation under section 166 also. Here, there are no exceptional circumstances. Contention of the appellant that in view of the increase in life expectancy and decrease in interest rate, a higher multiplicand should be adopted cannot be accepted. We see no ground to interfere in the multiplier adopted by the tribunal. For loss of dependency, tribunal has granted Rs.2,24,064/-. Since we have taken Rs.2,000/- as the loss of monthly dependency, compensation payable for loss of dependency is Rs.3,84,000/- ($\text{Rs.}2000 \times 12 \times 16$). Therefore, additional compensation payable under this head will be Rs.1,59,936/-.

3. The injured died on the way to the hospital and the dead body had to be brought back from the hospital in special conveyance. No amount was granted for transportation expenses and so we award Rs.1,500/- for transportation expenses. It is submitted that for loss of estate only Rs.2,500/- was granted and compensation granted under other heads are also very low. Considering the total amount granted, we are of the view that no increase is needed in the compensation awarded under those heads.

4. First appellant wife lost her husband at the age of 28 and three minor children were aged only between 7 and 2 years. The children lost father's care, love and affection. The tribunal has granted Rs.10,000/- towards compensation for loss of consortium and loss of love and affection. We are of the opinion that wife ought to have been granted Rs.10,000/- for loss of consortium and Rs.5,000/- each towards loss of love and affection and father's care to the minor children. Thus, claimants are entitled to another Rs.10,000/-. So, the claimants are entitled to Rs.1,71,436/- rounded to Rs.1,71,435/- . The additional amount of Rs.1,71,435/- should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit. On deposit of the above, one-third of the amount can be withdrawn by the first claimant wife and balance can be deposited in equal shares in the name of the minor children so that they can withdraw the same when they become 21 years of age.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

**J.B. KOSHY AND
K.HEMA,JJ.**

M.F.A. No.1253 of 2001

Judgment

Dated:31st October, 2007