

(2014) 02 KL CK 0059
In the High Court Of Kerala
Case No : MACA. No. 2555 of 2012

The National Insurance Co. Ltd.

APPELLANT

Vs

N. Divakaran and Kamalam. A.

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 02 KL CK 0059

Hon'ble Judges : Harun-Al-Rashid, J; Alexander Thomas, J

Bench : Division Bench

Advocate : George Cherian, (Thiruvalla) for Adv, Advocate for the Appellant;
Jayakumar (by Order) R1 and R2 for, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Harun-Al-Rashid, J.—National Insurance Company Ltd. is the appellant. The appeal is directed against the award in O.P.(MV).No.1519/2002 on the file of the IInd Additional Motor Accidents Claims Tribunal, Kollam. The Tribunal allowed the claimants to realise an amount of 4,00,500/- with interest at 9% per annum from 21/11/2002 till realisation from the respondents jointly and severally. The parties are hereinafter referred to as the petitioner and respondents as arrayed in the original petition.

2. The deceased is aged 23 years. Parents are the claimants. The accident occurred on 28/8/2002 at about 9-00 a.m. on a public road. The deceased was riding on a motorcycle. He was knocked down of a lorry and thus he sustained fatal injuries. Respondents 1 and 2 remained ex parte. Appellant contested the case. A sum of Rs. 3,60,000/- was awarded as the compensation for loss of dependency. Learned counsel for the appellant contended that the Tribunal ought to have fixed the multiplier relevant to the age of the claimants. The claimants are aged 60 and 53 years respectively. It is contended that the multiplier adopted by the Tribunal is on the higher side and without any basis. The Tribunal

relied on the decisions reported in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and P.S. Somanathan and Others Vs. District Insurance Officer and Another, and held that the multiplier in relation to the age of the deceased is the rule even in a claim filed u/s 166 of the Motor Vehicles Act. The Tribunal found that the multiplier that has to be taken is in relation to the age of the deceased, and it is 18. In the latest decision namely, Reshma Kumari and Others Vs. Madan Mohan and Another, the Apex Court held that the age of the deceased has to be taken in a claim u/s 166 of the Motor Vehicles Act. Though the reasonings of the Tribunal could not find support in view of the latest decision in Reshma Kumari's case, we hold that there is no factual error or legal infirmity in passing the impugned judgment. The appeal is devoid of any merit and accordingly dismissed.

O.P.(MAC).No. 3392/2013

The 1st claimant filed the original petition seeking a direction to the respondent to deposit the award amount before the Tribunal within a time frame fixed by this Court. The award was passed on 22/10/2011. It is for the claimant to approach the appropriate Forum for execution of the award. He cannot straight away come to this Court under Article 227 for recovery of the award amount. However, the learned counsel for the petitioner submits that the award amount will be deposited shortly. In view of the submission made by the learned counsel, no further orders are necessary in the original petition.

Original Petition is disposed of accordingly.