

**(2004) 05 KL CK 0036**

**High Court Of Kerala**

**Case No:** M.A.C.A. No. 605/04 in O.P. (M.V.) No. 378/99

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Rasheed

RESPONDENT

**Date of Decision:** May 31, 2004

**Citation:** (2005) 1 ACC 438 : (2005) ACJ 613 : (2004) 3 ILR (Ker) 145 : (2004) 3 KLT 552 : (2005) 1 RCR(Civil) 181

**Hon'ble Judges:** K. Thankappan, J; J.B. Koshy, J

**Bench:** Division Bench

**Advocate:** Elizabeth Varkey, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

J.B. Koshy, J.

This appeal is filed by the Insurance Company against the award passed by the Motor Accidents Claims Tribunal, Tirur in O.P. (M.V.) No. 378 of 1999. Respondents 1 to 3 are the husband, father and mother of one Hajira who died in a motor accident.

2. On 8th June 1996 at about 3.30 p. m. while the deceased was travelling in a Trekker bearing Registration No. KL 9A/8440 from Tanur to Tirur, bus bearing Registration No. KCF 9219 driven by the 5th respondent herein in a rash and negligent manner dashed against the Trekker as a result of which some of the passengers were seriously injured and Hajira died. The deceased was a poor lady aged 20. She was in the advanced stage of pregnancy at the time of the accident. According to the claimants, the deceased was earning Rs. 75 per day. But the Tribunal fixed only notional income of Rs. 1,500 and dependency loss at Rs. 1,000 per month. Considering the facts and circumstances of the case, the Tribunal awarded a compensation of Rs. 2,31,500 with 9 per cent interest. The Insurance Company in this case questions the quantum of compensation.

3. The only ground taken by the appellant is that the Tribunal should not have granted Rs. 25,000 for the death of the child in the womb. Learned Counsel for the

appellant relied on the decision of the High Court of Himachal Pradesh in [Rakesh Kumar and Another Vs. Prem Lal and Others](#), wherein it was held that no separate compensation is payable for loss of foetus. Such a loss of foetus is a part of the bodily injuries sustained by the deceased.

4. The Tribunal calculated the compensation taking into account the notional income and the death of the foetus was taken as part of the bodily injury sustained by the deceased. The Tribunal rightly took into account the fact that the child in the womb also died in the accident while calculating the compensation for the death of the lady. It cannot be stated that the award is in any way wrong. It cannot be stated that separate claim for death of the foetus was considered by the Tribunal. The deceased was carrying the child and, therefore, the total compensation included Rs. 25,000 for the death of the lady.

The appeal is, therefore, dismissed.