

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

MACA.No. 133 of 2004 ()

AGAINST THE AWARD IN OPMV 42/1994 of M.A.C.T.,ERNAKULAM DATED 12-06-1996
APPELLANT(S)/PETITIONERS::

1. VALSALA SAMSON, AGED 45 YEARS,
W/O. LATE JOSEPH SAMON.

2. NILEEMA SAMSON, AGED 22,
D/O. LATE JOSEPH SAMON.

3. NITHIN SAMSON, AGED 18 YEARS,
S/O. LATE JOSEPH SAMON.
ALL APPELLANTS ARE RESIDING AT, 306/G "JWALAGIRI"
AMBALAMUGHAL P.O.

BY ADV. SRI.ANIL S.RAJ

RESPONDENT(S)/RESPONDENTS::

1. K.C.VARGHESE, KANJIRAVELIL HOUSE,
PAZHAMTHOTTAM.

2. VARKEY CHACKO, S/O. VARKEY,
THYKKATTUTHARA HOUSE, PAZHAMTHOTTAM KARA
ERNAKULAM VILLAGE.

3. UNITED INDIA INSURANCE CO.LTD.,
COCHIN-16.

R3 BY ADV. SMT.P.A.REZIYA
R,R1 BY ADV. SRI.P.V.GEORGE (ONAKKOOR)
R,R1 BY ADV. SMT.GEETHA.S (SHANKAR)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.**

M.A.C.A.No.133 of 2004

Dated this the 18th day of June, 2015

JUDGMENT

Jyothindranath, J.

This is an appeal filed by the claimants, aggrieved by the award in O.P.(MV) No.42/1994 on the file of the Motor Accidents Claims Tribunal, Ernakulam.

2. The facts in a nutshell, is that the appellants are the legal heirs and dependents of the deceased who was employed as a Fireman in Cochin Refineries Limited, Ambalamughal. He met with a motor vehicle accident and sustained fatal injuries and succumbed to the injuries. Alleging that the accident occurred due to the negligence of the driver of the tanker lorry involved in the accident, a claim petition moved before the Tribunal for a total sum of Rs.10 Lakhs. The Tribunal awarded a sum of Rs.3,88,000/-. Challenging the quantum, preferred this appeal.

2. When the appeal came up for hearing, the main submission

made by the learned counsel for the appellant is that the deceased was a permanent employee of Cochin Refineries Ltd. who was having a salary of Rs.4,464/- per month. It is the submission that the first appellant is his wife whereas appellants 2 and 3 are the children. It is also the submission that one of the children was suffering from leukaemia and the deceased was spending major portion of his income for the welfare of the family. It is the submission that one third deduction for personal expenses is not warranted in this case as there is a special reason for taking a lower deduction. It is also the submission that the Tribunal only awarded a nominal amount towards loss of consortium and loss of love and affection. The fact that the first appellant was very young, was not considered by the Tribunal.

3. Learned counsel for the insurance company vehemently argued before us that the accident occurred on 28.8.1993. The Tribunal passed the award on 12.6.1996. There was an inordinate delay in preferring this appeal. It is also their case that sufficient compensation awarded and no interference is warranted in this case. It is also the submission that on the period of delay, the appellants are not entitled for any interest.

4. It is found that the Tribunal took Rs.3,000/- as monthly income and after deducting one third for personal expenses, the loss of dependency assessed. As per Ext.A4, the income of the deceased was Rs.2,955/- per month, but at the same time future prospects are to be considered. The deceased was in the age group of below 40. Thus, 50% has to be considered for future prospects. The court below considered Rs.3,000/- as his monthly income. Thus, the monthly income for the purpose of calculation of dependency, will come to Rs.4,500/-. After deducting one third, the multiplicand will be Rs.3,000/-. Considering the age group of the deceased, the multiplier of 15 can be used. Apart from this, considering the period of accident and all other attendant circumstances, an increase in loss of consortium and other heads is also warranted. We also grant an amount of Rs.20,000/- towards loss of estate.

Thus, the total compensation is refixed as follows:

<i>Head of clam</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by the Tribunal</i>
Transport to hospital, damage to clothing, hospital expenses, funeral expenses, etc.	6000	6000
Pain and suffering	5000	10000
Loss of consortium	6000	50000

<i>Head of clam</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by the Tribunal</i>
Loss of love and affection	6000	50000
Shortened expectation of life	5000	5000
Loss of dependency	360000	540000
Loss of estate		20000
Total		681000

(Rupees Six Lakhs and Eighty-one thousand only)

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition, subject to the condition that for the period of delay, viz. 2526 days the appellants will not be entitled for interest on the enhanced amount. The insurance company is directed to deposit the amount of compensation within three months, less the amount already deposited. The children will be major now and hence the parties are entitled for withdrawal of the amount of compensation

The appeal is allowed as above. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH,, JUDGE.)

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**T.R. RAMACHANDRAN NAIR &
K.P. JYOTHINDRANATH, JJ.**

M.A.C.A.No.133 of 2004

JUDGMENT

18th day of June, 2015