

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

MACA.No. 93 of 2012 ()

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AGAINST THE AWARD IN OPMV 55/2007 of M.A.C.T., KOTTAYAM DATED 21-05-2011  
APPELLANT(S): PETITIONERS  
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1. SURESHBABU  
THAZHATHU, NEAR INDIA PRESS, MARIAPPALLY P.O.  
KOTTAYAM-686023.

2. LEELAMONY  
THAZHATHU, NEAR INDIA PRESS, MARIAPPALLY P.O.  
KOTTAYAM-686023.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENT(S) / RESPONDENTS:  
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1. K.C.JOSE  
KULAPARAMPAN (H), CHERIYA VAPPALLASSERY  
NEDUMBASSERY P.O., ALUVA-683585.

2. BIJU @ BIJU JOSEPH,  
KANNANKERIL, PALLICKACHIRA P.O., VALLONCHIRAKULAM  
PAYIPPADU-690556.

3. THE UNITED INDIA INSURANCE CO.LTD.  
KOTTAYAM-686001.

R3 BY ADV. SMT.T.C. SOWMIAVATHY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON  
07-08-2015, ALONG WITH MACA 94/2012, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

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

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**M.A.C.A.Nos.93 and 94 of 2012**  
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**Dated this the 7<sup>th</sup> day of August, 2015**

**JUDGMENT**

**Ramachandran Nair, J.**

The appellants in both the appeals are common and they are the parents of deceased Archa and Arya. Both their children died in an accident which occurred on 27.12.2005 at 8.15 p.m. They were travelling in a KSRTC bus bearing Reg. No.KL 15/4478 from Changanassery to Alappuzha along the A.C. road. It was hit by a tipper lorry bearing Reg. No.KL 5/J 8622. The accident occurred near Parackal kalunk. The elder child was aged 11 years and was studying in Class V at Baker Memorial HSS, Kottayam and the younger child who was aged 5 years, was studying in LKG Class in Therasas L.P. School, Kottayam. Both of them were died on the spot itself.

2. The second appellant herein also sustained very severe injuries and she had also filed a separate claim petition as O.P.(MV) No.50/2007, claiming compensation and from the judgment in the said

claim petition, MACA No.95/2012 has been filed before this Court.

3. For convenience, we will take both the appeals together which relate to compensation consequent on the death of the children. The Tribunal has considered several claim petitions together and as far as O.P.(MV) Nos.51/2007 and 55/2007 are concerned, the discussion is available from internal page 29 of the award, from paragraph 70. In both the cases, the Tribunal took a notional income at Rs.2,000/- per month and fixed the annual income at Rs.24,000/- and deducted 50% for personal expenses. Thereafter, applying the multiplier of 15, the dependency compensation has been calculated at Rs.1,80,000/-. An amount of Rs.20,000/- is granted towards loss of love and affection and Rs.3,000/- has been granted for funeral expenses. A sum of Rs.5,000/- is granted for loss of estate, Rs.2,000/- for transport to hospital and under the head damage to clothing Rs.500/- is awarded. Accordingly, a total compensation of Rs.2,10,500/- each has been granted in both these cases.

4. Heard learned counsel for the appellants and learned counsel appearing for the insurance company.

5. Learned counsel for the appellants submitted that at least

Rs.30,000/- should have been taken as the annual income. It is also submitted that the deduction of amount towards personal expenses cannot be justified. Learned counsel further submitted that the amount awarded towards funeral expenses and loss of love and affection are not in tune with the decision of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (2) KLT 89 - SC) and no amount has been granted towards pain and suffering. Therefore, a refixation of compensation is sought by the learned counsel.

6. The above contentions have been answered by the learned counsel for the insurance company by pointing out that as far as the children are concerned, only a notional income can be taken and the notional income fixed by the Tribunal cannot be said to be too low. Therefore, it is submitted that a just and fair compensation has been granted.

7. We are of the view that as far as the children are concerned, only a notional income alone is being taken. Herein, it is at Rs.2,000/- per month. The children were studying in Standard V and in LKG class. Deduction of any amount towards personal expenses is not warranted since actually they were not having any expenses, being

children. Apart from that, the annual income is fixed only at Rs.24,000/-. But as far as loss of love and affection is concerned, the claimants are entitled for Rs.1 Lakh each and funeral expenses at Rs.10,000/- each. We also grant an amount of Rs.7,500/- each for pain and suffering.

Accordingly, the compensation is refixed in both the cases in the following manner:

M.A.C.A.No.93/2012

| <i>Head of claim</i>       | <i>Amount awarded</i> |
|----------------------------|-----------------------|
| Transport to hospital      | 2000                  |
| Damage to clothing         | 500                   |
| Funeral expenses           | 10000                 |
| Loss of dependency         | 360000                |
| Loss of estate             | 5000                  |
| Loss of love and affection | 100000                |
| Pain and suffering         | 7500                  |
| Total                      | 485000                |

M.A.C.A.No.94/2012

| <i>Head of claim</i>       | <i>Amount awarded</i> |
|----------------------------|-----------------------|
| Transport to hospital      | 2000                  |
| Damage to clothing         | 500                   |
| Funeral expenses           | 10000                 |
| Loss of dependency         | 360000                |
| Loss of estate             | 5000                  |
| Loss of love and affection | 100000                |

| <i>Head of claim</i> | <i>Amount awarded</i> |
|----------------------|-----------------------|
| Pain and suffering   | 7500                  |
| Total                | 485000                |

The Tribunal has found that the third respondent insurance company is liable to satisfy the award and we confirm the said finding. The enhanced amount of compensation will carry interest at the rate of 9% per annum from the date of filing of the petitions. There will be a direction to the insurance company to deposit the award amount along with interest in both the appeals, less the amounts already deposited, if any, within a period of three months. We apportion the amounts equally among the appellants and they are permitted to withdraw the amount also.

The appeals are allowed as above. The parties will suffer their costs in the appeals.

**(T.R. RAMACHANDRAN NAIR, JUDGE.)**

**(K.P. JYOTHINDRANATH, JUDGE.)**

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