

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

MACA.No. 591 of 2005 ()

AGAINST THE AWARD IN OPMV 864/1994 of M.A.C.T.,PUNALUR DATED
27-11-2004

APPELLANTS/PETITIONERS:

1. THANKAMMA, MOTHER OF DECEASED C.SUGATHAN
THAKKUBHAVANAM, VALLAMMUTHICADU, VALAVUPACHA P.O.
KOLLAM DISTRICT.

2. C.RAJAMMA, SISTER OF DECEASED C.SUGATHAN
THAKKUBHAVANAM, VALLAMMUTHICADU, VALAVUPACHA P.O.
KOLLAM DISTRICT.

3. C.MADHU BROTHER OF DECEASED C.S.SUGATHAN
THEKKUBHAVANAM, VALLAMMUTHICADU, VALAVUPACHA P.O.
KOLLAM DISTRICT. (DIED)

4. C.LATHIKA, SISTER OF DECEASED C.SUGATHAN
THAKKUBHAVANAM, VALLAMMUTHICADU, VALAVUPACHA P.O.
KOLLAM DISTRICT.

5. C.PADMINI, SISTER OF DECEASED C.SUGATHAN
THAKKUBHAVANAM, VALLAMMUTHICADU, VALAVUPACHA P.O.
KOLLAM DISTRICT.

6. C.BABU BROTHER OF DECEASED C.SUGATHAN,
THAKKUBHAVANAM, VALLAMMUTHICADU, VALAVUPACHA P.O.
KOLLAM DISTRICT.

7. KUTTAPPAN, SATHYAVILASOM,
PUNNAMANYELA, VAYALA P.O., ANCHAL.

8. KRISHNANKUTTY, SREEJAYAVILASOM
AYYANPILLAI VALVU, KULATHUPUZHA.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS/RESPONDENTS:

1. THE MANAGING DIRECTOR
M/S. OIL PALM INDIA LTD., KOTTAYAM-4.

2. J.HAKKIM S/O. JAMAL, BLOCK NO.143,
IZCENT JUNCTION, KUZHIVILAKARIKKAKAM
THINKALKARIKKAKAM VILLAGE, KULATHUPUZHA
KOLLAM DISTRICT.

3. DIRECTOR, KERALA STATE INSURANCE
DEPARTMENT OFFICE, KOLLAM.

* ADDITIONAL RESPONDENTS

4. SUKUMARY
W/O MADHU, THADATHARIKATHU VEEDU
VALLAMVENTHAKADU
VALAVUPACHA P.O., CHITHARA
KOLLAM DISTRICT

5. MANU
S/O MADHU, THADATHARIKATHU VEEDU
VALLAMVENTHAKADU
VALAVUPACHA P.O., CHITHARA
KOLLAM DISTRICT

6. MANEESH
S/O MADHU, THADATHARIKATHU VEEDU
VALLAMVENTHAKADU
VALAVUPACHA P.O., CHITHARA
KOLLAM DISTRICT

* THE LEGAL HEIRS OF DECEASED THIRD APPELLANT IMPEADED VIDE ORDER
DATED 10.4.2013 IN I.A.NO.801/2013

R1 BY ADV. SMT.PRIYA KRISHNAMOORTHY
R3 GOVERNMENT PLEADER SRI.K.K.SAIDALAVI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.591 OF 2005

Dated this the 17th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants are the claimants before the Tribunal and they are aggrieved by the inadequacy of the compensation.

2. The appellants at the time of filing of the appeal have been the mother and siblings of deceased Sugathan. During the pendency of the appeal, the third appellant, one brother died and the legal representatives have been impleaded as additional respondents 4 to 6.

3. The deceased was a carpenter by profession and was also doing contract work. It is alleged that the accident occurred while he was standing in front of a petty shop situated on the side of Kulathupuzha - Thiruvananthapuram public road. The accident occurred on 16.8.1993 at 11.30 a.m. The offending vehicle, a mini bus bearing Reg.No.KL/5/5290 which was coming in a great speed hit against the victim and the petty shop. He succumbed to the injuries

while being taken to the Medical College Hospital, Thiruvananthapuram. The deceased was aged 30 years at the time of the accident. In his profession as a contractor in carpentry works, he was earning ₹3,000/- going by the case pleaded by the appellants. It is also pleaded that the deceased was the sole bread winner of the family.

4. The Tribunal by reckoning the age of the mother fixed the multiplier at 5 and the multiplicand at ₹2,000/-. As regards the evidence in this case, PW1 one of the claimants was examined and Ext.A1 to A8 have been marked. Going by the oral evidence of PW1, the deceased was earning ₹3,000/- per month. In support of the contract work, Ext.A8 certificate issued from Bharath Nursing Home, Kulathupuzha showing a payment of ₹3,00,000/- during 1990-92 for timber supply and carpentry works done in the hospital has also been produced. But in spite of the same, the Tribunal fixed the monthly income at ₹2,000/- only, which according to the learned counsel for the appellants is too low.

5. As far as the multiplier is concerned, in the light of the judgment of the Apex Court in Sarla Varma v. Delhi Transport

Corporation (2010 (2) KLT 802 (SC), it will be 17 and the age of the deceased will have to be reckoned. Therefore we adopt 17 at the multiplier. According to us, ₹3,000/- claimed as the monthly income will be reasonable as he was a skilled worker namely a carpenter and he was also getting contract work. The principle for fixing compensation going by the judgment in Sarla Varma's case (supra) in the case of a bachelor will be to deduct 50% for the personal expenses and the balance will go towards contribution to his family. Here the original claimants 4 to 6 were the younger siblings of the deceased. For considering the grant of compensation, we will have to consider them as the siblings who were being maintained by him apart from the mother.

6. The amounts awarded towards different heads are also, according to the learned counsel, meagre. We have gone through the award of amounts in paragraph 15 which will show that for the ambulance charges, ₹2,000/- has been awarded, towards funeral expenses, ₹5,000/- has been awarded, for pain and suffering, ₹10,000/- has been awarded and by adding the amount of compensation

fixed for loss of dependency at ₹40,000/-, a total amount of ₹57,000/- has been granted. It is a case of death of the bread winner of the family and therefore we adopt ₹3,000/- as the monthly income of the deceased and after deducting 50% for personal expenses, the dependency compensation will be ₹ 3,06,000/- (3000 x 12 x 17 x 50%) which we award.

7. Regarding the other heads, we find that no amount has been granted towards loss of love and affection and loss of estate. We award a sum of ₹50,000/- towards loss of love and affection and ₹20,000/- towards loss of estate. For funeral expenses, we award ₹10,000/-. We maintain the amount awarded towards pain and suffering at ₹10,000/- and for ambulance charges at ₹2,000/-.

8. Accordingly, the total compensation is refixed as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	306000
Loss of love and affection	50000
Loss of estate	20000
Pain and suffering	10000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Funeral expenses	10000
Ambulance charges	2000
Total	398000 (Rupees three lakhs ninety eight thousand only)

9. Out of the total compensation granted as above, 50% of the same along with interest is awarded to the mother namely the first appellant. The remaining amount will be shared equally by the remaining appellants and in equal proportion by the respondents 4 to 6 together .

10. The enhanced compensation will carry interest @ 9% per annum from the date of petition. Going by the award of the Tribunal, interest for the period from 25/06/2001 to 26/10/2004 was not allowed as the same will cover the period during which the O.P. was dismissed for default till it was restored to file and we maintain the same and also hold that for the said period, the appellants will not be entitled for interest for the enhanced amount of compensation. We also hold that the third respondent will be liable to satisfy the award and the amount

will be deposited within a period of three months. Since the third respondent is given liberty to recover the same from the first respondent owner, we maintain the same also.

The appeal is accordingly allowed. There will be no order as to costs in this appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.