

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 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

MACA.No. 168 of 2012 ()

**AGAINST THE AWARD IN OP(MV) 1390/2008 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,ERNAKULAM DATED 18.6.2011
APPELLANTS/PETITIONERS:**

- 1. MRIDULA MARTIN @ ANNA MRIDULA
AGED 35 YEARS, W/O. LATE N.D.MARTIN**
- 2. MADHURIMA MARTIN (MINOR)
AGED 8 YEARS, D/O. LATE N.D.MARTIN**
- 3. N.J.DEVASSY, AGED 76 YEARS
S/O. LATE JOSEPH**
- 4. ELIKKUTTY DEVASSY, AGED 70 YEARS,
W/O. N.J.DEVASSY**

**2ND APPELLANT IS REPRESENTED BY HER MOTHER AS NEXT FRIEND
MOTHER AND NATURAL GUARDIAN.**

**ALL THE APPEALLANTS ARE RESIDING AT NEREVEETIL HOUSE
CHEMBUMUKKU, KAKKANADU P.O. THRIKKAKKARA VILLAGE
KANAYANNUR TALUK, ERNAKULAM DISTRICT**

**BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SMT.ANILA PETER
SRI.G.ARUN GOPAN
SRI.J.VIVEK GEORGE**

RESPONDENTS/RESPONDENTS:

- 1. KOVIL HEMACHANDRA MOHAN
S/O. VELAYUDHAN, 48/1978 G, 'NABHAS', PERUMBOTTA ROAD
ELAMAKKARA P.O. COCHIN 682 026**

MACA.No. 168 of 2012 ()

- 2. ARSHAD MOHAN,
S/O. KOVIL HEMACHANDRA MOHAN, 48/1978 G
'NABHAS', PERUMBOTTA ROAD
ELAMAKKARA P.O. COCHIN 682 026**
- 3. NATIONAL INSURANCE COMPANY LIMITED
DIVISIONAL OFFICE, CHITTOOR ROAD, SOUTH JUNCTION
COCHIN 682 016**

**R3 BY ADVS. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW
R BY SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.168 of 2012

Dated this the 23rd day of July, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This is an appeal preferred against the award made in O.P.(M.V.)1390/2008 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The challenge is against the quantum of compensation awarded.

2. The facts are as follows:

On 1.5.2008, while the deceased Martin was travelling on a motor bike, a motor bike bearing registration No.KL/7-AS.430 came from the opposite side and hit against the motorcycle on which the deceased was travelling and in that accident the deceased sustained fatal injuries and succumbed to the injuries. The wife, daughter and parents are the claimants. Even though a total claim for Rs.10 lakhs was made, the Tribunal awarded only Rs.6,23,000/-. Aggrieved by the quantum of compensation awarded, this appeal preferred.

3. Heard both sides.

4. The counsel for the appellants submitted before us that the deceased was a driver cum owner by profession. He was the owner of a lorry bearing registration No.KL/1.2577 as well as he was having driving licence which will be evidenced from Ext.A9. Even though all these materials were before the Tribunal, as well as the fact that the accident occurred in the year 2008 only, Rs.4,000/- alone is considered as his income for the assessment purposes. It is also the submission that the compensation awarded on the head of funeral expenses, loss of estate, compensation for loss of love and affection are also on lower side. It is the further submission that the first appellant is very young aged only 32 years and the compensation awarded on the head of loss of consortium is also on a lower side.

5. The learned counsel for the Insurance Company submitted before us that in this case, a deduction of 1/5th alone is made from the total income towards personal

expenses. It is also the submission that when there is no positive evidence regarding the actual income of the deceased, the Tribunal took an income of Rs.4,000/- and an interference is not warranted in this case regard, especially when a total compensation of Rs.6,23,000/- is granted.

6. From the documents produced, it can be seen that the deceased was the owner of a lorry as well as functioning as a driver. It can be further seen that the deceased was only aged 36 years. The Tribunal took only Rs.4,000/- as monthly income. A driver that, also a person who owns a lorry can have at least an income of Rs.6,000/- per month. As an income of Rs.6,000/- per month is considered, we are not taking any income towards future prospects. The claimants are 4 in number. Going by the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**, 1/4th of the income will have to be deducted for personal expenses of the deceased and the multiplier will be 15. Considering the age of the deceased, as well as the first appellant and other

attending circumstances and materials, we are fixing just compensation as follows:

Head of claim	Amount re-fixed in Rs.
Loss of dependency	6000x12x15x3/4 810000
Transportation	2000
Funeral expenses	25000
Loss of estate	30000
Pain and suffering	10000
Compensation for loss of love and affection	100000
Loss of consortium	100000
Total	10,77,000

7. Thus, the enhanced compensation will be Rs.10,77,000/- (Rupees ten lakhs seventy seven thousand only). The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation. The enhanced compensation also shall be apportioned in the same ratio as ordered by the Tribunal.

8. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit

being made, the appellants will be entitled for the release of the amount.

Since the original claim is only for Rs.10 lakhs, the appellants will have to pay court fee for the amount awarded by this Court over and above the claim which will be recovered by the Tribunal once the amount is deposited by the Insurance Company.

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

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/