

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. 170 of 2012 ()

**AGAINST THE AWARD IN OP(MV) 59/2006 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,THRISSUR DATED 27.8.2011**

APPELLANTS/PETITIONERS:

- 1. JOSEPH
S/O. FRANCIS**
- 2. ROSEMOL,
D/O. JOSEPH**
- 3. RIJO (MINOR)
S/O. JOSEPH.**
- 4. MARIYAM,
W/O. ANTONY**

**(MINOR 3RD APPELLANT REPRESENTED BY HIS GUARDIAN FATHER THE 1ST
APPELLANT HEREIN)**

**ALL ARE RESIDING AT ALAPPAT HOUSE
PERAMANGALAM P.O. MUNDUR, THRISSUR DISTRICT**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD**

RESPONDENTS/RESPONDENTS:

- 1. CILASH
S/O. GOPALAKRISHNA MENON
RESIDING AT KARUMATHIL HOUSE, PAMBOOR P.O. KUTTOOR
THRISSUR DISTRICT PIN 680013**

MACA.No. 170 of 2012 ()

2. JOY K.O.

**S/O. OUSEPH, RESIDING AT KOKKADAN HOUSE, PAMBUR
THRISSUR 680 013**

3. THE ORIENTAL INSURANCE COMANY LIMITED

**BRANCH OFFICE, KPN SHOPPING COMPLEX
OPPOSITE THIRUVAMBADY TEMPLE, SHORNUR ROAD
THRISSUR 680 001**

R3 BY ADV. SRI.GEORGE CHERIAN (SR.)

SMT.K.S.SANTHI

SMT.LATHA SUSAN CHERIAN

R BY SRI.GEORGE CHERIAN (THIRUVALLA)

**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.170 of 2012

Dated this the 23rd day of July, 2015

J U D G M E N T

Ramachandran Nair, J.

In this appeal by the appellants, who are claimants before the Tribunal, enhancement is sought on the quantum of compensation consequent on the death of the wife of appellant No.1 Smt. Reetha Joseph and appellants 2 & 3 are their children and appellant No.4 is her aged mother. She was a tailor by profession and was travelling as a pillion rider in a motorcycle bearing registration No.KL-8/Y-4553, on 22.9.2005 at about 6.40 p.m. She was travelling through Thrissur-Kunnamkulam public road towards northern direction and at a place called Choorakattukara, she was thrown away to the road due to the negligent driving of the rider of the motorbike. She sustained a very serious head injury and was immediately taken to the Amala Hospital, Thrissur and succumbed to the injury at about 10.30 p.m.

2. The learned counsel for the appellants submitted

that being a tailor aged only 32 at the time of accident the monthly income claimed was moderate namely at Rs.4,000/-. To prove the age of the deceased Ext.A4 electoral identity card was produced and going by the same as on 1.1.2001 she was aged 30 years. Therefore the Tribunal assessed the age as 34 at the time of accident, which we confirm. According to us the monthly income claimed at Rs.4,000/- cannot be said to be exorbitant and instead of Rs.3,000/- adopted by the Tribunal, we take it as Rs.4,000/- for the purpose of fixing the dependency compensation.

3. Learned counsel for the Insurance Company submitted that the assessment of monthly income is correct and he supported the amount of compensation as assessed by the Tribunal.

4. As there are four claimants $\frac{1}{4}$ of the amount will have to be deducted for personal expenses. As regards the amount that can be granted towards loss of consortium and loss of love and affection the appellants are entitled to

Rs.1 lakh each.

5. In the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)]** and the decisions following the same for funeral expenses we grant an amount of Rs.25,000/-. No amount has been granted towards loss of estate. We fix an amount of Rs.30,000/- for loss of estate and as far as pain and suffering is concerned, we fix an amount of Rs.10,000/-.

6. Therefore, we re-fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.
Loss of dependency	4000x12x16x3/4 576000
Loss of consortium	100000
Loss of love and affection	100000
Loss of estate	30000
Transportation	2000
Funeral expenses	25000
Pain and suffering	10000
Total	8,43,000 (Rupees eight lakh forty three thousand only)

7. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation. The Tribunal has granted 8% as interest which we enhance to 9% per annum.

8. Out of the enhanced compensation fixed by us, Rs.25,000/- with interest is awarded to the appellant No.4 and out of the balance amount 50% is awarded to appellant No.1 and remaining amount will be shared equally by the children, i.e. appellants 2 & 3 along with interest. Since it appears that children have become major, we permit them also to withdraw the amount.

9. 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.

10. Since the claim is only at Rs.7 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/