

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

MACA.No. 234 of 2012 ()

AGAINST THE AWARD IN OPMV 701/2009 of M.A.C.T.,KOZHIKODE
DATED 20-04-2010

APPELLANT(S)/PETITIONER 1,2.:

1. N.SIVADASAN AGED 57 YEARS
S/O.KUNHIRAMAN, AREEKAL HOUSE, NECHIKKAT
P.O.VELIMUKKU, MALAPPURAM DISTRICT.

2. VIJAYALAKSHMI AGED 53 YEARS
W/O.N.SIVADASAN, AREEKAL HOUSE, NECHIKKAT
P.O.VELIMUKKU, MALAPPURAM DISTRICT.

BY ADV. SRI.JACOB ABRAHAM

RESPONDENT(S)/RESPONDENT 1 TO 3.:

1. MAJEED, AGED 47 YEARS
S/O.MUHAMMED, KATTAYAM PARAMBIL, CHELAVOOR
MOOZHICKAL, KOZHIKODE.

2. P.V.ALAVI
S/O.AYAMU, VALIYARA PEDIYEKKAL HOUSE
P.O.PPATHARIPIRIYAM, MANJERI, MALAPPURAM.

3. THE ORIENTAL INSURANCE COMPANY LTD
JASEELA COMPLEX, BYPASS JUNCTION, NILAMBUR ROAD
MANJERI.

R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
P.V. ASHA, JJ.**

M.A.C.A.No.234 of 2012

Dated this the 18th day of February, 2015

JUDGMENT

Asha, J.

The appellants are the legal heirs of deceased Jinesh who met with an accident on 19.9.2008. The deceased was going to his office riding his motor cycle, when he was hit down by a lorry, on account of which he sustained severe injuries and succumbed to the injuries on the same day.

2. A claim petition was filed seeking compensation to the tune of Rs.4 Lakhs. It was claimed that the deceased was working as a Mechanic in KVR Motors, earning a monthly income of Rs.7,000/-. The Tribunal reckoned his income at the rate of Rs.2,500/- per month and awarded a total compensation of Rs.1,89,500/-. This appeal is filed seeking enhancement of compensation on the ground that the amount awarded by the Tribunal under various heads are thoroughly inadequate.

3. We heard learned counsel on either side. Learned counsel for the insurance company opposed the claim for enhancement on the ground that there is no proof for the income or qualification of the deceased. Learned counsel for the appellants pointed out that the documents relating to his service were produced before the Tribunal.

4. Having regard to the rival contentions on either side, we find that the deceased was working as a Mechanic. The appellants' claim as to the avocation of the deceased and his income are not seriously disputed and there is no evidence to the contrary. In view of the rate of wages prevailing at the relevant time and also in view of the fact that the deceased was a skilled worker, we reckon the monthly income of the deceased at Rs.5,000/-. As the deceased was aged 27 years and was unmarried, the proper multiplier to be adopted is 17 and 50% of the income has to be deducted towards personal expenses. Therefore, the compensation under the head of loss of dependency will come to Rs.5,10,000/- (Rs.5000 x 12 x 17 x ½). The Tribunal has awarded a sum of Rs.10,000/- towards loss of love and affection and Rs.3,000/- towards funeral expenses. Going by the judgment of the Apex Court in

Rajesh v. Rajbir Singh (2013 (3) KLT 89 - SC), we award a sum of Rs.25,000/- towards funeral expenses and Rs.1 Lakh towards loss of love and affection. We also award a sum of Rs.25,000/- towards loss of estate.

The award passed by the Tribunal is therefore modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Transport to hospital	1000	1000
Damage to clothing	500	500
Funeral expenses	3000	25000
Pain and suffering	10000	10000
Loss of love and affection	10000	100000
Loss of dependency	165000	510000
Loss of estate		25000
Total		671500

(Rupees Six Lakhs Seventyone thousand and five hundred only)

The enhanced amount will carry interest at the rate of 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months. The

Tribunal shall recover the court fee in deficit, from the enhanced compensation to be deposited by the insurance company.

This Court, while condoning the delay as per order in C.M.Appl. No.299/2012, ordered that in case the appeal is allowed, the enhanced compensation to be awarded to the appellants will not carry interest during the period of 538 days condoned by the said order. We reiterate the same and order that the enhanced amount will not carry interest for the period covered by the delay, viz. 538 days.

The appeal is allowed accordingly. The parties shall suffer their respective costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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