

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

MACA.No. 865 of 2006 ()

AGAINST THE AWARD IN OPMV 557/2002 of M.A.C.T. TIRUR DATED 11-11-2005
APPELLANT(S)/PETITIONERS:

1. RABIYA
W/O.LATE KUNHI KOYA HAJI, KALIYATH HOUSE
VENDALLORE P.O., IRUMBILIYAM, VALANCHERY.

2. MARAKKAR @ MANU, AGED 44 YEARS,
S/O.LATE KUNHI KOYA HAJI, IRUMBILIYAM, VALANCHERY.

3. FATHIMA, AGED 46 YEARS,
D/O.LATE KUNHIKOYA HAJI, KALIYATH HOUSE
VENDALLORE P.O., IRUMBILIYAM, VALANCHERY.

4. MUHAMMEDKUTTY, AGED 38 YEARS,
S/O.LATE KUNHIKOYA HAJI, KALIYATH HOUSE
VENDALLORE P.O., IRUMBILIYAM, VALANCHERY.

5. YOOSUF ALI, AGED 36 YEARS,
S/O.LATE KUNHIKOYA HAJI, KALIATH HOUSE
VENDALLORE P.O., IRUMBILIYAM, VALANCHERY.

6. SUBAIDA, AGED 34 YEARS,
D/O.LATE KUNHIKOYA HAJI, KALIYATH HOUSE
VENDALLORE P.O., IRUMBILIYAM, VALANCHERY.

7. ABDUL AZEEZ, AGED 32 YEARS,
S/O.LATE KUNHIKOYA HAJI, KALLIYATH HOUSE
VENDALLORE P.O., IRUMBILIYAM, VALANCHERY.

8. SAKKENA, AGED 30 YEARS,
S/O.LATE KUNHIKOYA HAJI, KALIYATH HOUSE
VENDALLORE P.O., IRUMBILIYAM, VALANCHERY.

BY ADVS.SRI.PROMY KAPRAKKATT
SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SMT.P.K.BEENA

RESPONDENT (S) :

1. MANI
PANDARAPARAMBIL HOUSE, KOCHANNUR P.O.
KARIYANNUR VILLAGE, THALAPPILLY TALUK.

2. MANAGING PARTNER, M/S.MAYIL VAHANAM,
SHORNUR P.

3. UNITED INDIA INSURANCES CO. LTD.,
ROAD, OTTAPPALAM P.O.

4. NATIONAL INSURANCE CO. LTD.,
KORAMBAYIL ARCADE, MANJERI P.O.

R,R1 BY ADV. SRI.P.JAYASANKAR

R,R.3 BY ADV. SRI.M.A.GEORGE

(R1 DELETED AS PER ORDER IN IA 1978/2015 DT.14/7/2015)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.865 of 2006

Dated this the 14th day of July, 2015

JUDGMENT

Ramachandran Nair, J.

The mother and siblings of the deceased are before this Court seeking enhancement of the compensation. The deceased Faisal Babu who was the Manager in a jewellery shop, got involved in an accident on 30.6.2002 at about 4.45 p.m., while he was travelling in a motor cycle having Reg. No.KL-10N/2591 as a pillion rider. At a place called Kulappilli, the offending vehicle, a bus having Reg. No.KL-9/1599 hit the motor cycle. He was taken to the hospital, but succumbed to the injuries.

2. Heard both sides.

3. As far as the compensation granted is concerned, it is seen that the Tribunal has taken the monthly income only at Rs.500/- as contribution to the family. After considering the evidence, the Tribunal was also of the view that even though Ext.A6 shows that he was getting

a salary of Rs.4,000/- per month, as he was a bachelor, he would have spent considerable amount for himself and the savings will be very few and he will be getting married in future. This led to the adoption of only a sum of Rs.500/- as monthly contribution.

4. In the light of the judgment of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC), 50% of the income alone need be set apart for personal expenses and hence the remaining 50% will have to be treated as contribution to the family. For the purpose of assessment of compensation, Rs.4,000/- is taken as the monthly salary. The deceased was aged 25 at the time of accident and therefore, the multiplier will be 18. The claimants will also be entitled for loss of love and affection.

5. Learned counsel for the insurance company submitted that the siblings may not be entitled to claim compensation, since some of them are elder to the deceased and there will be no loss of dependency for them. As far as the mother is concerned, she will be entitled for

compensation on the basis of loss of dependency.

We, therefore, refix the compensation in the following manner:

<i>Head of claim</i>	<i>Amount awarded</i>
Transport to hospital	2000
Pain and suffering	10000
Funeral expenses	25000
Loss of dependency	$4000 \times 12 \times 18 \times \frac{1}{2} = 432000$
Loss of estate	30000
Loss of love and affection	100000
Total	599000

(Rupees Five lakhs and ninety-nine thousand only)

6. The enhanced amount of compensation will carry interest at 9% per annum from the date of filing of the petition. The third respondent has been found liable to pay the amount of compensation which we confirm. We also make it clear that out of the enhanced compensation, 65% along with interest will be paid to the mother, appellant No.1 and the remaining amount will be shared equally by the other claimants. Since the total amount claimed by the appellants is Rs.5 Lakhs, they will pay court fee for the amount awarded by this

Court, if not already paid. The said amount will be recovered by the Tribunal from the amount to be deposited by the insurance company.

The appeal is allowed as above. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH, JUDGE.)

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