

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

MACA.No. 493 of 2012 ()

AGAINST THE AWARD IN OPMV 1106/2008 of MACT PALA DATED 26-11-2011

APPELLANTS/PETITIONERS:

1. NASURUDIN M.
S/O. MUHAMMED, KOLASSERIL HOUSE
ALUMKADAVU P.O. KARUNAGAPPALLY, KOTTAYAM.

2. ABIDA
W/O. NASURUDIN, KOLASSERIL HOUSE
ALUMKADAVU P.O. KARUNAGAPPALLY, KOTTAYAM.

BY ADVS.SRI.JAGADEESH LAKSHMAN
SRI.S.PRASANTH

RESPONDENTS/RESPONDENTS:

1. SIBY KURIAKOSE
VAZHAKALAYIL, KUNINJI, VAZHITHALA
IDUKKI-685602.

2. SUNNY CHACKO
S/O. CHACKO, THIRUVELIKUNNEL, KOZHA KARA
KOTTAYAM-686001.

3. THE MANAGER
UNITED INDIA INSURANCE CO.LTD. DIVISIONAL OFFICE
KOTTAYAM-686001.

4. SUNNY JACOB THIRUVELIKUNNEL
KOZHA KARA, KURAVILANGAD
KOTTAYAM (ADDL. R4 IN O.P. (MV))-686001.

R3 BY ADV. SRI.T.J.LAKSHMANAN IYER
BY SRI.JOHN JOSEPH VETIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
B.SUDHEENDRA KUMAR, JJ.**

M.A.C.A.No.493 OF 2012

Dated this the 10th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the parents of a boy who died in an accident on 27/05/2008 at about 3.50 p.m.. He was travelling on a bicycle from Puthen Pallikkunam to Marian Centre in Palai and when he reached at R.V. junction, the offending vehicle a bus bearing Reg.No. KL-5/Q 1422, which was coming through public road hit the bicycle. He fell and sustained grievous injuries and on the way to the Medcial College Hospital, Kottayam, he died. A total amount of Rs. 94,000/- was awarded as compensation by the Tribunal.

2. The learned counsel for the appellants submits that no amount has been granted towards loss of dependency. We find from the award especially in paragraph 5 that the Tribunal has granted amounts towards pain and suffering (Rs.25,000/-) , loss of estate (Rs.10000/-), loss of love and affection (Rs.40,000/-), funeral expenses

(Rs.15,000/-), medical expenses (Rs.2,000/-), damage to clothing (Rs.1,000/-) and for transportation Rs.1000/- has been granted.

3. The learned counsel for the appellants submits that in the light of the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation (2010(2) KLT 802 (SC)**, multiplier method had to be taken to award loss of dependency. According to the learned counsel for the appellants, as far as the income of child claimants are concerned, the judgment of the Apex Court in **Kishan Gopal and another v. Lala and others (2013 ACJ 2594)**, will show that the Apex Court in a case of a deceased boy aged 10 has adopted the income as Rs.30,000/- per annum. The learned counsel for the Insurance Company submitted that normally amount of Rs.15,000/- annually is being taken and in terms of the second schedule 15 is the multiplier also.

4. We have considered the rival submissions. True that the Apex Court in the above judgment, relied upon by the learned counsel for the appellant, has assessed the notional income of the deceased at

Rs.30,000/- per annum. The said finding was rendered in the light of the evidence that he was assisting his father in his agricultural work. Herein the boy was aged 11. There is no evidence of any other efforts taken by him to contribute to the income of the family. But in the said judgment of the Supreme Court one of the aspects pointed out is the falling rupee value and other related aspects. In this case, the accident had occurred in the year 2008. Therefore, we find it proper to adopt Rs.24,000/- as the yearly income for assessing compensation. As far as loss of love and affection is concerned, the appellants are entitled for Rs.1 lakh in the light of the judgment of the Apex Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)** . For funeral expenses, we grant Rs.25,000/-.

5. Accordingly, we recompute the compensation in the following manner :

<i>Head of compensation</i>	<i>Amount Awarded in rupees</i>
Transportation	1000
Damage to clothing	1000
Medical expense	2000
Funeral expense	25000

<i>Head of compensation</i>	<i>Amount Awarded in rupees</i>
Pain and suffering	25000
Loss of estate	10000
Loss of love and affection	100000
Loss of dependency	360000 (24000 x 15)
Total	524000 (Rupees five lakhs twenty four thousand only)

6. The enhanced compensation will carry interest @ 9% per annum. The Insurance Company shall deposit the amount less the amount already deposited, if any, within a period of three months from the date of receipt of a copy of this judgment.

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

T.R.RAMACHANDRAN NAIR, JUDGE

B.SUDHEENDRA KUMAR, JUDGE

SV.