

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

MACA.No. 535 of 2012 ()

AGAINST THE AWARD IN OPMV 358/2010 of M.A.C.T., ERNAKULAM
DATED 03-06-2011

APPELLANTS/PETITIONERS:

1. SUJA KURIAN
W/O.LATE KURIAN, MULLAMKUZHIYIL HOUSE, THUTHIYOOR
THRIKKAKKARA, KAKKANAD.

2. JERIN KURIAN,
S/O.LATE KURIAN, MINOR
REPRESENTED BY MOTHER SUJA KURIAN

3. JEIN,
S/O.LATE KURIAN, MINOR
REPRESENTED BY MOTHER SUJA KURIAN.

4. JESLY KURIAN,
D/O.LATE KURIAN, MINOR
REPRESENTED BY MOTHER SUJA KURIAN.

BY ADVS.SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENT(S):RESPONDENTS

1. S.MOHANDAS
S/O.SANKUNNI NAIR, 20/4T/23, 11
PERUMAL LAYOUT NO.1, METTUPALAYAM, COIMBATORE DISTRICT
TAMILNADU-05.

2. K.S.RADHAKRISHNAN @ RAJAN,
S/O.SANKU, RAVUPACAM, THENARI
PALAKKAD, NOW RESIDING AT HOUSE NO.9-C-33
RAMACHAMI PILLAI STREET, MAHADEVAPURAM, METTUPALAYAM
COIMBATORE DISTRICT.

3. THE NEW INDIA ASSURANCE CO. LTD.,
5/1/338, ANNAPOORNA BUILDING, OOTTY MAIN ROAD
METTUPALAYAM-01.

R3 BY ADV. SRI ZIYAD REHMAN (NO MEMO)
R3 BY ADV. SRI.VPK.PANICKER
R BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A No.535 of 2012

Dated this the 10th day of March, 2015

JUDGMENT

Asha, J.

The appellants are the widow and 3 children of late Kurian, who met with an accident on 19.08.2009. When he was riding a motor cycle bearing Reg.No.KL-07-BH-1416 it was hit by a lorry. He succumbed to the injuries on the same day.

2. The claim petition was filed seeking compensation to the tune of Rs.8 lakhs. The Tribunal has awarded Rs.5,15,000/-. This appeal is filed seeking enhancement in compensation. We heard the learned counsel appearing on either side. The learned counsel for the appellant submitted that the amount awarded under various heads are thoroughly inadequate. It is also pointed out that the income reckoned is too low. The learned counsel for the Insurance company opposed the claim for enhancement.

3. The deceased was stated to be a businessman in furniture and he was also a dealer in MTS mobiles. Documents were produced to show that he was a member of the Vyapari

Vyavasayi Ekopana Samathy; he was paying rent for premises in which he was conducting the business of furniture and he was paying professional tax. The Tribunal reckoned his income as Rs.4,000/-. We are of the view that the income of the deceased can be reckoned at least @ Rs.5,500/- per mensem. As there are 4 dependents, 1/4th can be deducted towards personal expenses. The deceased was aged 46 years. The proper multiplier is 13. Thus the compensation under the head 'loss of dependency' will come to Rs.6,43,500/- (ie. Rs.5500X12X3/4X13). The Tribunal has awarded a sum of Rs.5,000/- alone towards funeral expenses; Rs.25,000/- towards loss of love and affection and Rs.10,000/- towards loss of consortium. In the light of the judgment in **Rajesh v. Rajbir Singh** [2013(3) KLT 89(SC)] and **Savitha v. Bindha Singh** [(2014) 4 SCC 505], we award a sum of Rs.25,000/- towards funeral expenses; Rs.1,50,000/- towards loss of love and affection and Rs.1 lakh towards loss of consortium. The Tribunal has not awarded any amount towards loss of estate. We award a sum of Rs.35,000/- towards loss of estate. Accordingly the award passed by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Head of claim</i>	<i>Amt. awarded by the Tribunal</i>	<i>Amt. modified</i>
1	Loss of dependency	Rs. 4,68,000.00	Rs. 6,43,500.00
2	Transport and expenses	Rs. 2,000.00	Rs. 2,000.00
3	Funeral expenses	Rs. 5,000.00	Rs. 25,000.00
4	Compensation for pain and sufferings	Rs. 5,000.00	Rs. 10,000.00
5	Compensation for loss of love and affection (3 minor children)	Rs. 25,000.00	Rs. 1,50,000.00
6	Compensation for loss of consortium	Rs. 10,000.00	Rs. 1,00,000.00
7	Loss of estate	Nil	Rs. 35,000.00
	TOTAL	Rs. 5,15,000.00	Rs.9,65,500.00

(Rupees Nine lakhs sixty five thousand and five hundred only)

Thus, the appellants will be entitled to a total compensation of Rs.9,65,500/- (Rupees Nine lakhs sixty five thousand and five hundred only) and the enhanced amount will carry interest at the rate of 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal. The Tribunal has already apportioned compensation in equal shares. Accordingly the shares allotted to appellants 3 and 4 shall be kept in a fixed deposit with any nationalised bank until they attain majority and on their attaining majority, they can withdraw the amount and

appellants 1 and 2 can withdraw their shares as soon as the amount is deposited by the Insurance Company.

The appeal is allowed accordingly. The parties will bear their respective costs.

Sd/-

T.R.RAMACHANDRAN NAIR
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/

P.S to Judge

P.V.ASHA, J

R.P. No. in W.P.(C) No.

O R D E R

Dated 31st July, 2009.