

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

MACA.No. 1062 of 2005 ()

(AGAINST THE AWARD IN OPMV 1075/1999 of M.A.C.T., KOTTAYAM DATED
22.12.2003)

APPELLANTS/PETITIONERS IN OP.MV.:

1. ANNAMMA JOSEPH, W/O.LATE JOSEPH,
PAZHAYAMPALLIL HOUSE, MANNANAM KARA
ATHIRAMPUZHA VILLAGE.

2. NANCY ROSE JOSEPH (MINOR),
D/O.LATE JOSEPH, RESIDING AT DO, . DO.

3. NIMMY TRESA JOSEPH (MINOR) D/O.LATE
JOSEPH, RESIDING AT DO. DO.(APPELLANTS 2 AND 3 BEING
MINORS ARE REPRESENTED BY THE NEXT FRIEND AND
MOTHER THE IST APPELLANT.

BY ADVS.SRI.P.JACOB VARGHESE (SR.)
SRI.VIVEK VARGHESE P.J.

RESPONDENTS/RESPONDENTS IN OPMV.:

1. SUSAN BABY, KANJIRATHINAL HOUSE,
KALATHIPPADY, VADAVATHOOR, KOTTAYAM.

2. BABY THOMAS, OF DO. DO.

3. THE NATIONAL INSURANCE CO.LTD.,
KOTTAYAM.

4. CHACKO JOSEPH, F/O.LATE P.J.JOSEPH,
PAZHAYAMPALLIL HOUSE, MANNANAM KARA
ATHIRAMPUZHA VILLAGE.

MACA.No. 1062 of 2005 ()

***ADDL. RESPONDENTS 5 TO 10:**

5. ALEYAMMA KUTTAPPAN, D/O. LATE CHACKO JOSEPH, AGED 59
PAZHAYAMPALLY HOUSE, MANNANAM, NOW RESIDING AT NO.5,
ANITHA, M.R. REDDY LAYOUT, RAMAMURTHY NAGAR,
BANGALORE - 560 016.
6. P.J. JACOB, AGED 58 YEARS, S/O. LATE CHACKO JOSEPH,
PAZHAYAMPALLY HOUSE, MANNANAM, NOW RESIDING AT NO.349,
IST CROSS. II A, MAIN ROAD, DOMLUI LAYOUT,
BANGALORE - 560 071
7. TOM JOSEPH AGED 44 YEARS, S/O. LATE CHACKO JOSEPH
PAZHAYAMPALLY HOUSE, MANNANAM, NOW RESIDING AT NO.349,
7th CROSS. II A, MAIN ROAD, DOMLUI LAYOUT,
BANGALORE - 560 071
8. KUNJAMMA , AGED 49, D/O. LATE CHACKO JOSEPH,
PAZHAYAMPALLY HOUSE, MANNANAM, NOW RESIDING AT THADATHIL
HOUSE, PERUMBAIKADU P.O., KOTTAYAM
9. THRESSIAMMA VARKEY, D/O. LATE CHACKO JOSEPH, AGED 65 YEARS,
PAZHAYAMPALLY HOUSE, MANNANAM, NOW RESIDING AT MANIKKATTU
HOUSE , VARAMPUTHU P.O. KAPPIKKALAM, WYNADU. \
10. LYZAMMA LONAPPAN, D/O. LATE CHACKO JOSEPH, AGED 45 YEARS,
PAZHAYAMPALLY HOUSE, MANNANAM, NOW RESIDING AT
CHIRYANKANDATHU HOUSE, POTTAYIL HOUSE,
POATHOL P.O., TRICHUR.

**(ADDL. RESPONDENTS 5 TO 10 ARE IMPEADED AS PER ORDER DATED
20.02.2015 IN I.A.No.805 OF 2010)**

R3 BY ADV. SRI.LAL GEORGE
R6,7 & 10 BY ADV. SMT.MANEESHA KUMAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
SUNIL THOMAS, JJ.**

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M.A.C.A.No.1062 OF 2005
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Dated this the 4th September, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

Inadequacy of compensation awarded by the M.A.C.T, Kottatyam as per the award dated 22.12.2003 in O.P.(MV)No. 1075 of 1999 (death case) is the subject matter of challenge in this appeal preferred by the claimants (legal heirs of the deceased) who are the appellants herein. The accident occurred on 12.05.1999, when the scooter ridden by the deceased and a car bearing No. KL.5F/238, owned by the first respondent, driven by the second respondent and insured by the third respondent, came from the opposite sides and knocked down then deceased, causing fatal injuries. This led to the claim petition preferred by the appellants, who are the widow and minor children respectively.

2. The case projected by the appellants was that the deceased was working as a Section Officer with a net salary of

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Rs.7900/- per month and that he would have obtained enhancement taking the same to Rs.9300/- per month by virtue of imminent Pay Revision. It is also pointed out that he was a Post Graduate degree holder and prior to his appointment in the Government Service, he was taking some classes in 'Spoken English' as well. Amounts were claimed under various heads and documentary evidence was adduced before the Tribunal vide Exts. A1 to A12 produced from the part of the claimants. After evaluation of the evidence, the Tribunal arrived at a finding that the accident was only because of rash and negligent driving of the car and liability was fixed accordingly. Evaluating the materials on record, the Tribunal chose to reckon Rs.9000/- as monthly salary of the deceased and multiplier was taken as '15'. Considering the fact that the deceased had already crossed the age of 45 years, the multiplier was bifurcated and for the initial period of 7 years, the entire Rs.9000/- was taken as monthly salary and considering the qualification and such other aspects pointed out, a sum of Rs.4500/- was taken as probable income after the retirement

and accordingly, adopting the remaining multiplier of '8', the total compensation under the head towards loss of dependency was worked out as Rs.7,92,000/-.The amounts awarded under various heads as discussed in paragraph 8 are in the following terms :

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|---|---|-------------|
| 1. Loss of consortium, love and affection | : | Rs.20000.00 |
| 2. Pain and suffering | : | Rs.5000.00 |
| 3. Funeral expense | : | Rs.2000.00 |
| 4. Transportation | : | Rs.1000.00 |

The said amounts have been directed to be satisfied with interest at the rate of 6% per annum, correctness of which is sought to be challenged by the claimants by way of this appeal.

3. Heard the learned Counsel for the appellants as well as the learned Standing Counsel for the Insurance Company. After hearing both the sides, this Court finds that all the relevant aspects have been taken note of by the Tribunal for fixing compensation. Even though appropriate multiplier should have been taken as per the decision in **Sarla Verma vs. Delhi**

Transport Corporation [2009(6) SCC 121], the Tribunal has reckoned '15' as the multiplier with appropriate extent of bifurcation, with regard to which we do not propose to make any interference, though the learned Standing Counsel for the Insurance Company vehemently argued with regard to the appropriate multiplier to be taken and the lesser extent of compensation payable.

4. The learned Standing Counsel for the Insurance Company points out that the total compensation awarded by the Tribunal is quite adequate. We find that the amounts awarded by the Tribunal under some heads require some modification. It is to be noted that the Tribunal has awarded only Rs.20000/- towards loss of consortium and loss of love and affection as well and a menial amount of Rs.5000/- towards pain and suffering. It is to be noted that adequacy of compensation payable under the head-'loss of consortium' and 'loss of love and affection' has been discussed by the Apex Court and it has been held as per the decision in **Rajesh vs. Rajbir Singh [2013 (3) KLT 89 (SC)]** that claimants are entitled to have compensation at the rate of

Rs.one lakh each. But the accident in the said case had occurred in the year 2007; whereas in the instant case, the accident had occurred on 12.05.1999. The payment of compensation depends upon various factors to be looked into, particularly with regard to money value and cost of living index. On evaluation of the circumstances as above, this Court finds that some enhancement (to appropriate extent) is necessary in this case. Accordingly, we find it fit and proper to grant some enhancement in the compensation towards loss of consortium, fixing the same as Rs.50000/- and as such, the balance compensation payable is **Rs.30000/-**. Similarly, in the case of pain and suffering, compensation payable is fixed as Rs.50000/-. After giving credit to the sum of Rs.5000/-awarded by the Tribunal, the balance comes to **Rs.45000/-**. The Tribunal has awarded only Rs.2000/- towards funeral expenses, which we find it inadequate and the same is raised to Rs.10000/-, resulting balance of **Rs.8000/-**. No other variation does require to be made under any other heads. The net result is that the appellants are entitled to get balance compensation of **Rs.83000/-** (Rupees eighty three

thousand only).

5. With regard to the rate of interest payable, it is seen that the Tribunal has awarded only 6% per annum. By virtue of the law declared by the Apex Court at this point of time, the interest should have been paid at the rate of **7.5%** per annum. We order the same accordingly.

6. In the above circumstance, since the policy stands admitted by the Insurance Company, there will be a direction to the third respondent/insurance company to deposit the entire amount with interest as above, for the period from the date of filing of the petition before the Tribunal till realisation, at the earliest, at any rate, within one month from the date of receipt of a copy of the the judgment.

**P.R. RAMACHANDRA MENON,
JUDGE**

**SUNIL THOMAS,
JUDGE**