

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

MACA.No. 1107 of 2005 ()

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AGAINST THE AWARD IN OP(MV) 831/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THODUPUZHA DATED 17-12-2004**

APPELLANTS/PETITIONERS:

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- 1. KURIAN,S/O. KURIAN
AGED 53 YEARS, EDAVAKANDATHIL HOUSE, ELEMDESAM KARA
ALAKODE VILLAGE, THODUPUZHA TALUK.**
 - 2. ANIAMMA, W/O.KURIAN, AGED 48,
RESIDING AT EDAVAKANDATHIL HOUSE, ELEMDESAM KARA
ALAKODE VILLAGE, THODUPUZHA TALUK.**

**BY ADVS.SRI.T.J.MICHAEL
SRI.P.NOOR SEMIR**

RESPONDENTS/RESPONDENTS:

*** 1. KAMARAJ @ SARAVANAN
S/O.KANDA SWAMI PILLAI, THIRUVALLUVAR ROAD
VANDAPPILLY P.O., KOVAL 41, TAMIL NADU. [DELETED]**

***2. B.CHIDAMBARAN, SRIKUMAR TRANSPORT,
294, D.B.ROAD, R.S.PURAM
COIMBATORE-2. [DELETED]**

***[RESPONDENT NO.1 AND 2 ARE DELETED FROM THE PARTY ARRAY AS PER
ORDER DATED 4.6.2014 IN I.A.1459/2014 IN MACA 1107/2005]**

**3. THE ORIENTAL INSURANCE CO.LTD.,
COIMBATORE.**

R3 BY ADV. SRI.VPK.PANICKER

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.1107 of 2005

Dated this the 29th day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is filed by the parents of the deceased Sri. Manjesh Kurian aggrieved by the inadequacy of compensation. The total amount claimed is Rs.5 lakhs and the Tribunal awarded only Rs.3,14,000/-.

2. He was a student for Engineering course doing his 3rd year in the discipline of Computer Technology. The accident occurred on 10.9.2001 while he was riding a motorbike bearing registration No.TN 28/R/0250 at 11 p.m. through Bhavani Road at Salem. The offending vehicle was a lorry bearing registration No.TN 37/M-3151 which entered from a side road and hit the bike driven by the deceased. He was taken to Government Hospital, Erode and succumbed to the injuries by 0.30 a.m. on the next day.

3. The only aspect which is to be considered is the adequacy of the award of compensation. Being a student,

the Tribunal has taken Rs.2,000/- as notional income per month and adopted the multiplier of 17 and after deducting 1/3rd for personal expenses fixed the dependency compensation at Rs.2,72,000/-. Rs.25,000/- was granted towards loss of love and affection, Rs.10,000/- towards pain and suffering, Rs.5,000/- was granted for transportation, Rs.2,000/- was granted for funeral expenses.

4. It is the contention of the appellants that he had already obtained a diploma and had obtained admission in Engineering Degree course through Lateral Entry after passing Diploma. Apart from the same he was a third year student in Computer Engineering course and if he had completed the course he had good potential to earn substantial income. Ext.A8 is the provisional degree certificate and he had secured first class. Therefore, according to us, the monthly income fixed by the Tribunal notionally requires reasonable enhancement and Rs.4,000/- will be a reasonable amount. The age of the deceased at the time of accident was 23 and the multiplier to be adopted going by the judgment in **Sarla Varma v.**

Delhi Transport Corporation [2010 (2) KLT 802 (SC)]

will be 18. 50% of the income will have to be deducted for personal expenses. Apart from the same going by the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)]** the appellants are entitled for Rs.1,00,000/- as compensation for loss of love and affection and Rs.25,000/- for funeral expenses. They lost their son at the young age of 23 and were deprived of the love and affection of the deceased. Therefore we re-fix the compensation in the following manner:

Head if claim	Amount awarded in Rs.
Loss of dependency 4000x12x18x50/100	432000
Loss of love and affection	100000
Funeral expenses	25000
Pain and suffering	10000
Transportation expenses	5000
Total	5,72,000 (Rupees five lakh seventy two thousand only)

5. The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation.

6. The appellants will be entitled to share the

amount equally. The Insurance Company has been found liable to satisfy the award and we confirm the same.

7. There will be a direction to the Insurance Company to deposit the amount of compensation, with interest less the amount already deposited, before the Tribunal within a period of three months and we permit the claimants to withdraw the amount after the same is deposited by the Insurance Company.

Since the claim is only at Rs.5 lakhs, the appellants will have to pay court fee for the amount awarded by this Court which will be recovered by the Tribunal once the amount is deposited by the Insurance Company.

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

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/