

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 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

MACA.No. 1092 of 2006 ()

AGAINST THE AWARD IN OPMV 3058/1997 of M.A.C.T., ERNAKULAM DATED 31-05-2005

APPELLANT(S)/CLAIMANTS:

1. ANITHA, AGED 46 YEARS,
W/O. LATE DEVARAJAN.
 2. MINOR DEEPA, REP. BY HER NEXT FRIEND
AND MOTHER ANITHA
 3. MINOR DEEPTHI, REP. BY HER NEXT FRIEND
AND MOTHER ANITHA.
 4. LAKSHMI, AGED 76 YEARS, ALL ARE
RESIDING AT VADAKKAKATH HOUSE, EDACOCHIN, COCHIN- 8.
- BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENT(S)/RESPONDENTS:

1. THAMBI JACOB, 15/1159,
KAITHAVELI HOUSE, NAZARETH, COCHIN-2.
 2. V.J.ANTONY, S/O. JOSEPH,
VATTAMAKKAL HOUSE, MOOLAMKUZHI KARA
RAMASWARAM VILLAGE, KOCHI TALUK. (DELETED)
 3. NATIONAL INSURANCE CO, LTD,
BY ITS REGL. MANAGER, REGL, OFFICE
MUTHOOT TOWERS, M.G. ROAD, COCHIN-35.
- R,R3 BY ADV. SRI.MATHEW JACOB(SR)
R,R3 BY ADV. SRI.P.JACOB MATHEW

(THE NAME OF R2 DELETED FROM THE PARTY ARRAY AS PER ORDER IN IA NO.52/2015 DATED 20.1.2015)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1092 OF 2006

Dated this the 3rd day of February, 2015

JUDGMENT

Asha, J.

The appellants are the widow, children and mother of deceased Devarajan. The deceased was travelling in a lorry as cleaner, when the accident occurred on 9.6.1997. The deceased was aged 49 and it was claimed that he was earning a monthly income at the rate of Rs.3,500/-. The Tribunal awarded a sum of Rs.2,47,000/- along with interest at the rate of 9% per annum.

2. This appeal is filed seeking enhancement of compensation on the ground that the amount awarded under various heads are thoroughly inadequate. The Tribunal reckoned the income only at the rate of Rs.1,750/- per month. Learned counsel for the appellant submits that the deceased was getting Rs.150/- per day and therefore the compensation under this head has to be enhanced.

3. We heard learned Senior Counsel for the insurance company also.

4. The Tribunal has adopted the multiplier of 15 and after deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses, on reckoning the monthly income at the rate of Rs.1,800/-, awarded a sum of Rs.2,16,000/- towards dependency compensation. Ext.A8 certificate was produced before the Tribunal to prove the income of the deceased that he was getting wages at the rate of Rs.150/- per day. In the light of the fact that the deceased was working as a cleaner, we are of the view that his income can be reckoned at the rate of Rs.2,500/- per month. The Tribunal had deducted $\frac{1}{3}^{\text{rd}}$ towards personal expenses. Learned counsel for the appellants pointed out that $\frac{1}{4}^{\text{th}}$ of the income has to be deducted towards personal expenses. The proper multiplier in the case of a person at the age of 41, is 14 in the light of the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802 - SC) and only $\frac{1}{4}^{\text{th}}$ can be deducted for personal expenses. Therefore, the compensation under the head of loss of dependency will be Rs.3,15,000/- (Rs.2,500/- x 12 x $14 \times \frac{3}{4}$).

5. The Tribunal awarded a sum of Rs.6,000/- towards funeral expenses which we enhance to Rs.15,000/-. Towards pain and suffering a sum of Rs.5,000/- is awarded. The same is also enhanced to Rs.10,000/-. A sum of Rs.10,000/- alone is granted towards loss of love and affection and another sum of Rs.10,000/- towards loss of consortium. In the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (2) KLT 89 - SC), we enhance the compensation under these two heads to Rs.1 Lakh each. Similarly, no amount is awarded towards loss of estate. We award a sum of Rs.10,000/- towards loss of estate. Accordingly, the award passed by the Tribunal is modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Loss of dependency	216000	315000
Funeral expenses	6000	15000
Pain and suffering	5000	10000
Loss of love and affection	10000	100000
Loss of consortium	10000	100000
Loss of estate		10000
Total	247000	550000

(Rupees Five lakhs and fifty thousand only)

The enhanced amount of compensation will carry interest at the rate of 9% per annum. The insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months. The appellants can withdraw the amount in the same proportion as fixed by the Tribunal.

The appeal is allowed as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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