

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

MACA.No. 675 of 2012 ()

**AGAINST THE AWARD IN OPMV 1113/2003 of SPL.COURT FOR EC ACT CASES
&MACT,TSR DATED 26-05-2011**

APPELLANTS/PETITIONERS:

- 1. ROSSY
WIDOW OF JOHNY.**
- 2. SHEEJA
D/O.LATE JOHNY.**
- 3. SHANTY
D/O.LATE JOHNY.**
- 4. JAISON
S/O.LATE JOHNY.**
- 5. SIMON
S/O.LATE JOHNY.ALL ARE RESIDING AT KANNANAKKAL HOUSE
P.O.PONNORE, KUNNAMKULAM, THRISSUR DISTRICT.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENTS/RESPONDENTS:

- 1. M. KUMARASWAMY
S/O.MARIAPPA GOUNDER, RESIDING AT 13/37
ERATTUKULAM POST, PALAKKAD-678 001.**
- 2. K.VELUCHAMI
S/O.KANDA MUTHAN, RESIDING AT 6/179, KARUVAPPARA
KOZHINJAMPARA, PALAKKAD-678 555.**
- 3. THE NATIONAL INSURANCE COMPANY LIMITED
EAST FORT COMPLEX, FORT MAIDAN, PALAKKAD-678 013.**

**R3 BY ADVS. SMT.SARAH SALVY
SRI.M.A.GEORGE**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JJJ

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

M.A.C.A. No. 675 of 2012

Dated this the 16th day of February, 2015

J U D G M E N T

T.R.Ramachandran Nair, J.

The appellants, who are the widow and children of deceased Sri.Johny, have filed this appeal seeking enhancement of compensation.

2. Late Sri.Johny died in an accident which occurred on 22.02.2003 at about 5.45 am. The deceased was riding in a bicycle through Parappur – Kaiparambu Public Road. The offending vehicle is a Tempo Van bearing registration No.KL-9/F-689, which hit him down. Even though he was taken to the Medical College Hospital, Thrissur, he died on the way.

3. The main dispute is with regard to the monthly income fixed by the Tribunal at Rs.2,500/-, the multiplier taken and the compensation awarded under the heads loss

of estate, loss of consortium, loss of love and affection at Rs.10,000/- each, for pain and suffering Rs.6000/- and funeral expenses Rs.5000/-.

4. We have heard the learned counsel appearing for both sides.

5. It is submitted by the learned counsel for the appellants that the deceased was conducting a Tea Shop and the monthly income claimed is Rs.5,000/-. But the Tribunal has arbitrarily fixed the monthly income at Rs.2,500/-. It is submitted that even for a daily labourer, in the year 2003, Rs.4000/- was being arrived at by the Tribunal.

6. Learned counsel for the respondent submitted that there is no documentary evidence to support the income.

7. It is true that he was aged 59 years, but he was conducting a Tea shop. The efforts of the deceased for conducting the business and his services to the family will have to be reckoned for the purpose of arriving at a just and

fair compensation. The accident is of the year 2003. Therefore, we will be justified in adopting Rs.4,000/- as the monthly income. 1/3rd will be deducted for personal expenses. The multiplier being 9, the total compensation to be calculated under that head will be the following:

8. For funeral expenses we grant Rs.25,000/-. Even though the death is instantaneous, we are granting Rs.10,000/- towards pain and suffering. For loss of consortium we grant Rs.1,00,000/- and for loss of affection also we grant Rs.1,00,000/-. For loss of estate we grant Rs.30,000/-.

9. Therefore the total compensation as modified above will be the following:

<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	1,60,000	2,16,000 [2000 x 12 x 9]
Transportation to Hospital	-	1500
Damages to clothing and articles	-	1000
Funeral expenses	5000	25000
Pain and suffering	6000	10000
Loss of estate	10000	30000

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified award passed by this Court (Rs.)</i>
Loss of consortium	10000	100000
Love and affection	10000	100000
Total	201000	483500

10. Even though the learned counsel for the respondent - Insurance Company submitted that the children are major, we are granting the amount since the mother, the 1st appellant is before this Court, would be entitled for the dependency compensation. The amounts will be shared by the appellants in the manner in which the Tribunal has already directed. The enhanced amount will carry interest at the rate of 9% per annum. The parties will bear their costs in this appeal.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE.

Sd/-
P.V. ASHA,
JUDGE.

//TRUE COPY//

P.A. TO JUDGE