

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

MACA.No. 686 of 2012 ()

IN OPMV 495/2006 of MACT ALAPPUZHA DATED 27-09-2011

APPELLANT(S):

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1. KUNJAMMA, AGED 51 YEARS,
W/O LATE JOSEPH MATHEW ALIAS VAVACHI
ULLADAPPALLI HOUSE, MUHAMMA P.O
MUHAMMA GRAMA PANCHAYATH WARD 7
ALAPPUZHA DISTRICT , KERALA STATE
 2. MANJU O.V, AGED 28 YEARS
D/O LATE JOSEPH MATHEW ALIAS VAVACHI
RESIDING AT ULLADAPPALLI HOUSE, MUHAMMA P.O
MUHAMMA GRAMA PANCHAYATH WARD 7
ALAPPUZHA DISTRICT KERALA STATE
 3. TINTU JOSEPH, AGED 24 YEARS
D/O LATE JOSEPH MATHEW ALIAS VAVACHI
RESIDING AT ULLADAPPALLI HOUSE, MUHAMMA P.O
MUHAMMA GRAMA PANCHAYATH WARD 7
ALAPPUZHA DISTRICT KERALA STATE
 4. MATHEW JOSEPH, AGED 19 YEARS
S/O LATE JOSEPH MATHEW ALIAS VAVACHI
RESIDING AT ULLADAPPALLI HOUSE, MUHAMMA P.O
MUHAMMA GRAMA PANCHAYATH WARD 7
ALAPPUZHA DISTRICT KERALA STATE

**BY ADVS.SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA**

RESPONDENT(S):

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1. AJITH B.
BHASKARAN NAIR, SREE RANGAM HOUSE, THALAPPARA
THALAYOLAPARAMBU P.O, VAIKOM KOTTAYAM DISTRICT 686 605

2. SREEJITH.S
S/O SUKUMARAN NAIR, SREE SADANAM HOUSE
THALAYOLAPARAMBU P.O
NEAR THIRUPPURAM SREEKRISHANA SWAMY TEMPLE
THALAPOLAPARAMBU GRAMA PANCHAYATH WARD 8
VAIKOM KOTTAYAM DISTICT 686 605
3. THE UNITED INDIA INSURANCE C.LTD,
REPRESENTED BY ITS DIVISIONAL MANAGER
DIVISIONAL OFFICE, ALAPPUZHA 688 001

R3 BY ADV. SRI.P.K.MANOJKUMAR
R BY SRI.JOHN JOSEPH VETTIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

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

M.A.C.A.No.686 of 2012

Dated this the 13th day of August, 2015

JUDGMENT

K.P.Jyothindranath, J.

This is an appeal preferred by the claimants in O.P.(MV).No.495/2006 on the file of the Motor Accidents Claims Tribunal, Alappuzha.

2. The facts in a nutshell are as follows; The deceased Mr.Joseph Mathew was riding his bicycle through Alappuzha-Thanneermukkom road, while so, a Maruthi car bearing Reg.No.KL-13/C.1293 came from the opposite direction and hit against the bicycle on which, the deceased was travelling. In that accident, the deceased sustained fatal injuries and succumbed to the injuries. The wife and children filed a claim petition before the Tribunal. The respondents therein were the driver, owner and the insurance company of the Maruthi car. The cause of accident is alleged on the negligence on the part of the driver of the car. The Tribunal awarded a total

compensation of Rs.7,07,000/- against a total claim of Rs.10,00,000/-. Aggrieved by the quantum of compensation awarded, this appeal is preferred by the appellants.

3. When the appeal came up for hearing, the counsel for the appellants submitted before us that the deceased was aged only 48 years at the time of accident. He was a mason by profession, which was proved by Exts.A13 and 14 documents. It is also the submission that even though the fact was that the deceased was a mason, the Tribunal considered only a monthly income of Rs.6,000/-. The accident occurred in the year 2006. It is the further submission that at any rate, an income of Rs.7,500/- should have been adopted by the Tribunal. It is also the submission made before us that the first petitioner is a young woman and the amount awarded on the head of loss of consortium is also on a lower side. It is further submitted before us that the lower court deducted 1/3rd from the annual income, while calculating loss of dependency. It is the submission that going by the dictum laid in **Sarala Verma v. Delhi Transport Co-operation**

[2010 (2) KLT 802 (SC)] case, the Tribunal should have deducted only $\frac{1}{4}^{\text{th}}$ towards personal expenses. It is also submitted before us that the compensation awarded on the head of pain and suffering and funeral expenses are on a lower side. No amount is seen awarded on the head of loss of estate. It is the further submission that this Court has to re-fix the just compensation in this case.

4. The learned counsel appearing for the insurance company submitted before us that even though Exts.A13 and 14 are produced by the claimants, there is no evidence to show the actual monthly income of the deceased. Thus the Tribunal took Rs.6,000/- as his monthly income, that is actually on a higher side. It is further submitted before us that after considering all materials produced in this case, the Tribunal assessed the just compensation and an interference is not warranted. It is the further submission that the deceased died on the very same day. Thus no interference is warranted in the award passed by the Tribunal.

5. After hearing the submissions of the counsel and after going through the award passed by the Tribunal,

it can be seen that there is positive evidence that the deceased was a mason by profession and also working as mason for more than 30 years. It is an indication that he was a skilled worker. If so, considering the year in which the accident occurred and all other attending circumstances, it will be only just and proper to consider Rs.7,000/- as the monthly income of the deceased for calculation purposes. The amounts awarded on the head of funeral expenses, loss of love and affection, loss of consortium and compensation of pain and sufferings are also on a lower side. No amount is seen granted on the head of loss of estate. Thus the just compensation is re-fixed as follows.

Head of Claim	Amount awarded in Rupees
Transportation expenses	Rs.3,000/-
Funeral expenses	Rs.25,000/-
Compensation for loss of dependency (7000x12x13x3/4)	Rs.8,19,000/-
Loss of love and affection	Rs.1,00,000/-
Loss of consortium	Rs.1,00,000
Pain and suffering	Rs.10,000/-
Loss of estate	Rs.35,000/-
Total	10,92,000/- (Rupees Ten lakhs ninety two thousand only)

6. The appellants are entitled for a total compensation of Rs.10,92,000/-(Rupees Ten lakhs ninety two thousand only). The enhanced compensation will bear 9% interest from the date of petition. The insurance company shall deposit the compensation within three months of this order. The Tribunal shall realise the court fee for the compensation awarded over and above the original claim before the Tribunal.

The appeal is allowed as stated above. From the enhanced compensation, 50% with interest shall be entitled to the first appellant, who is the wife of the deceased and the balance amount with interest shall be equally shared in between the appellant Nos.2 to 4. If the 4th appellant has not attained majority, the enhanced amount with interest shall be deposited till he attained majority.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE

Sd/-
K.P.JYOTHINDRANATH,
JUDGE

VS