

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

MACA.No. 772 of 2012 ()

AGAINST THE AWARD IN OPMV 190/2007 of M.A.C.T., KOZHIKODE
DATED 11-03-2010

APPELLANT(S)/PETITIONERS:

1. SANGEETHA SARATH AGED 42 YEARS
W/O. LATE DWARAKA UPPOOTT SARATH KUMAR
SILVER SPRINGS ACE STRUCTURES, P.O. MANKAVU
KOZHIKODE.

2. ARYA GAYATHRI (MINOR) AGED 17 YEARS
D/O. LATE DWARAKA UPPOOTT SARATH KUMAR
SILVER SPRINGS ACE STRUCTURES, P.O. MANKAVU
KOZHIKODE.

3. ARUNDHATHI SARATHI MINOR) AGED 14 YEARS
D/O. LATE DWARAKA UPPOOTT SARATH KUMAR
SILVER SPRINGS ACE STRUCTURES, P.O. MANKAVU
KOZHIKODE. (APPELLANTS 2 AND 3 ARE THE MINORS THEY ARE
REPRESENTED BY THEIR MOTHER AND LEGAL GUARDIAN OF THE 1ST APPELLANT)

BY ADV. SMT.K.V.RESHMI

RESPONDENT(S):RESPONDENTS

1. T.K. MAMU HAJI
S/O. UMMERKUTTY HAJI, THARAKULATH HOUSE
P.O. KODATHAYI BAZAR, THAMARASSERY, KOZHIKODE-673573.

2. P.K. MUHAMMED BASHEER
S/O. MAMU, PALAKANDY HOUSE, P.O. M.M. PARAMBU
KOZHIKODE-673573.

3. NATIONAL INSURANCE CO. LTD.
DIVISIONAL OFFICE, NOOR COMPLEX, MAVOOR ROAD
KOZHIKODE-673001.

4. SIVANANDAN, .
MARUTHOLI HOUSE, P.O. KAKKUR, KOZHIKODE-673619

5. RATHNAKUMARI,
W/O. SIVANANDAN, MARUTHOLI HOUSE, P.O. KAKKUR
KOZHIKODE-673619.

R3 BY ADV. SRI.MATHEWS JACOB (SR.)

R3 BY ADV. SRI.P.JACOB MATHEW

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.772 of 2012

Dated this the 8th day of April, 2015

JUDGMENT

Asha, J.

The widow and minor children of deceased Dwaraka Uppott Sarathkumar, had filed this appeal seeking enhancement in compensation. The deceased, while travelling with family in a car, was hit by a tipper lorry which came from the opposite direction, causing fatal injuries to the deceased and other members of his family. The deceased succumbed to the injuries on the very same day.

2. A claim petition was filed seeking compensation to the tune of Rs.20 Lakhs. It was claimed that the deceased was working as a Chief Engineer in Dubai, getting a sum of Rs.2 Lakhs as salary. The Tribunal awarded a total compensation of Rs.7,17,000/-. On the strength of Ext.A4 salary certificate, learned counsel for the appellants submitted that the Tribunal erred in not reckoning the salary as per the

salary certificate, according to which, he was getting a sum of Rs.2,85,222/- per month.

3. We heard learned counsel on both sides. Learned counsel for the insurance company submitted that there was no evidence before the Tribunal in order to rely on Ext.A4 salary certificate or to prove the income of the deceased.

4. The Tribunal has reckoned a sum of Rs.6,000/- as monthly salary of the deceased, accepting that the deceased was a qualified Engineer, since the same was not dispute db by the respondents. At the same time, the Tribunal did not accept Ext.A4 series of certificates on the ground that it was only a computer printed matter which was not certified by anybody.

5. On a perusal of Ext.A4 series, we also find that they are only computer generated print outs and nobody was examined to prove the income of the deceased. However, having regard to the wage structure prevailing in the country at the relevant time and in view of the fact that the deceased was stated to be an Engineer, we reckon his income at Rs.10,000/- per month. The deceased was aged

42 years and dependants are more than four in number including the parents. We therefore recalculate the compensation under the head of loss of dependency as Rs.12,60,000/- ($10000 \times 12 \times 14 \times \frac{3}{4}$).

6. The compensation awarded under the head of funeral expenses, loss of love and affection, loss of estate as well as loss of consortium awarded by the Tribunal are also found to be enhanced, in the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC). Therefore, we enhance the compensation towards funeral expenses to Rs.25,000/-, loss of love and affection to Rs.1 lakh, loss of consortium, to Rs.1 Lakh and loss of estate to Rs.75,000-.

Therefore, the total compensation will be recomputed as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Transport to hospital	1500	1500
Damage to clothing	500	500
Funeral expenses	3000	25000
Love and affection	10000	100000
Loss of estate	10000	75000
Loss of consortium	10000	100000
Loss of dependency	672000	1260000
Pain and suffering	10000	10000
Total		1572000

The enhanced amount of compensation will carry interest at 9% per annum from the date of petition till realisation.

While condoning the delay, this Court has ordered that in case the appeal is allowed, the enhanced compensation will not carry interest during the period of 660 days, viz. the period covered by the delay. We also reiterate the same. The insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within three months after deducting interest for the enhanced amount of compensation for the period covered by the delay. The compensation shall be apportioned in the ratio fixed by the Tribunal, i.e. 2:2:2:1:1 among the appellants and respondents 4 and 5.

The appeal is allowed as above. The parties will bear their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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