

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

MACA.No. 1265 of 2005 ()

**AGAINST THE AWARD IN OP(MV) 2636/1996 OF MOTOR ACCIDENTS CLAIMS
TRIBUNAL,ERNAKULAM DATED 07-04-2004**

APPELLANTS/PETITIONERS::

- 1. REJI PHILIP, S/O. PHILIP K. ANTONY
AGED 40, PAINGOTTY HOUSE, CHENAPPADI P.O.
KANJIRAPPALLY.**
- 2. RETNAM. P. MENON, AGED 60 YEARS,
RETNA DEEPIKA, KADEKUZHI HOUSE, KUNDANNOOR
MARADU P.O.[DIED]**

ADDITIONAL APPELLANTS 3 & 4 IMPLEADED:

ADDL. APPELLANT NO.3:

**SUDHA, D/O. LATE RETNAM P. MENON, AGED 48 YEARS,
37/1510 BHATTATHIRIPAD ROAD, KALOOR POM, KOCHI 682 017**

ADDL. APPELLANT NO.4:

**RATHY MENON, D/O. LATE RETNAM P. MENON, AGED 50 YEARS
RETNA DEEPIKA, KADEKUZHI HOUSE, KUNDANNOOR, MARADU P.O.
KOCHI 682 304.**

**ARE IMPLEADED AS ADDITIONAL APPELLANT 3 AND 4, BEING THE LRs OF THE
DECEASED 2ND APPELLANT AS PER ORDER DATED 12.6.2015 IN I.A.NO.1911/2015.**

BY ADV. SRI.K.V.JAYACHANDRAN

RESPONDENTS/RESPONDENTS:

- 1. YATHEENDRADAS, PANDAVANAPARAMBIL HOUSE
BOLGATTY DESOM, MULAVUKAD VILLAGE.**
- 2. SUNIL KUMAR, AGED 34 YEARS,
PARUTHIYEZHATHU HOUSE, EDAVANAKKAD VILLAGE
VYPPIN KARA.**

MACA.No. 1265 of 2005 ()

**3. THE UNITED INDIA INSURANCE COMPANY
LIMITED, COCHIN-31.**

R3 BY ADV. SRI.JOHN JOSEPH VETTIKAD

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A. No.1265 of 2005

Dated this the 17th day of June, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred by the claimants in O.P.(M.V.) No.2636/1996 on the file of the Motor Accidents Claims Tribunal, Ernakulam challenging the quantum. When the appeal came up for hearing, the learned counsel for the appellants submitted before us that a young woman aged 31 years, who was holding Ph.D in Photonics, met with a motor vehicle accident on 4.12.1995 and succumbed to the injuries. The husband and mother of the deceased filed the compensation claim claiming a total compensation of Rs.10 lakhs. The Tribunal has awarded only a sum of Rs.1,64,000/-. Aggrieved by the same, this appeal preferred.

2. The case of the appellants is that even though she was aged 31 years, multiplier of 12 alone is considered by the Tribunal. Going by the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation [2010 (2)**

KLT 802 (SC) the multiplier will be 16. It is also the submission that she was a Ph.D. holder in Photonics from Cochin University of Science and Technology. Thereafter she had undergone training in Quality Control of Seafoods from the Central Institute of Fisheries Technology. She also participated in so many other symposiums. Further submission is that her skill was assessed by the Department of Employment, Education and Training in Australia. It is an indication that she is entitled for employment and migration to Australia. It is also the submission that she was working in Germany during the period from 2.5.1994 to 20.9.1995 and at that point of time she was earning an income of Rs.40,000/- per month. It is also the submission that after return from abroad, she was awarded Research Associateship by the Council of Scientific and Industrial Research, New Delhi on a monthly stipend of Rs.3,000/-. While she was conducting this research, she met with the above accident. Even though at the time of accident, she was receiving a stipend of Rs.3,000/-, the Tribunal only took

a monthly income of Rs.1,500/- and used the multiplier of 12.

3. On the other hand the learned counsel for the Insurance Company vehemently submitted before us that there was no issues. Admittedly the first appellant remarried a woman in 2001. It is the further submission that the mother is aged 75 years now. It is also the submission that she was not a dependent of the deceased. She is having other male children. Considering all these aspects, the court used its discretion and took the multiplier of 12. It is an admitted case that deceased was not employed at that point of time. The case is that she was getting a research fellowship of Rs.3,000/- . When it is a research fellowship, the whole amount cannot be treated as income. Under such circumstances, the Tribunal took only Rs.1,500/- as income.

4. It is an admitted case that appeal preferred by the Insurance Company before this Court in respect of the same award is dismissed by order dated 23.6.2005 in

M.A.C.A.No.497/2005. While the said appeal was dismissed, this Court opined as follows:

“But, we are of the opinion that the multiplicand is very low. Even, the stipend she was getting at the time of accident was Rs.3,000/- is also taken, after deducting 1/3rd for personal expenses, Rs.2,000/- could have taken as multiplicand instead of Rs.1000/-. Then the effective multiplier is only six. In fact, in view of her qualification, future prospects early employment in foreign country etc. a much better amount could have been taken as multiplicand. We are of opinion that the amount of compensation awarded is on the lower side.”

What comes out is that this Court considered the aforesaid aspect. Surely it is a fact that even though there was high potential for the deceased, there was no employment at the time of accident. It is a fact that when research stipend is obtained a portion of the same is intended to be utilised for the research purposes. Considering the potential of the deceased as well as all other attending circumstances, including the view of this Court while disposing of the Insurance Company's appeal, we feel that an amount of Rs.3,000/- per month can be considered as income of the deceased for the purpose of calculating the compensation. In the light of the decision in Sarla Varma's case (supra)

the multiplier will be 16. After considering the admitted marriage of the first appellant claimant and the fact that the accident occurred in the year 1995, we re-fix the compensation as follows:

Head of Claim	Amount awarded in Rs.
Loss of dependency	3000 x 12 x 16 x 2/3 384000
Transportation	3000
Funeral expenses	15000
Pain and suffering	10000
Loss of consortium	25000
Loss of love and affection	50000
Total	487000 (Rupees four lakhs eighty seven thousand only)

Accordingly, the total compensation is fixed as Rs.4,87,000/- (Rupees four lakhs eighty seven thousand only) at the rate of 9% interest per annum for the enhanced compensation from the date of filing of the petition till realisation. Out of the total enhanced compensation, the additional appellants are granted a total amount of Rs.50,000/- (Rupees fifty thousand only) along with interest

which shall be shared equally among them and the balance amount shall be entitled to the first appellant at the same rate of interest.

There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimants to withdraw the amount when 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/