

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 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

MACA.No. 936 of 2012 ()

**AGAINST THE AWARD IN OP(MV) 569/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
THRISSUR DATED 22-10-2011
APPELLANTS/PETITIONERS :**

**1. KOUSALIA
W/O. LATE MADHAVAN**

**2. VINOD
S/O. LATE MADHAVAN**

**3. RATHEESH
S/O. LATE MADHAVAN**

**(APPELLANTS 1 TO 3 ARE RESIDING AT VARAVATTOOR HOUSE
P.O.IRUNILAMCODE, MULLOORKKARA, WADAKKANCHERY
THRISSUR DISTRICT.**

**4. SARALAKUMARI
W/O. RAMAKRISHNAN, RESIDING AT MUNDAPATHINGAL HOUSE
P.O.IRUNILAMCODE, MULLOORKKARA, WADAKKANCHERRY
THRISSUR DISTRICT.**

**5. AJITHA
W/O. RAMACHANDRAN, RESIDING AT POOLAIKKAL HOUSE
P.O.VAREED, (VIA) OTTAPALAM, PALAKKAD DISTRICT.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU
SRI.A.R.NIMOD
SRI.K.A.ANAS**

MACA.No. 936 of 2012 ()

RESPONDENTS/RESPONDENTS :

- 1. K.N.SARADHA
RESIDING AT THAZHATH HOUSE, P.O.PURANATTUKARA
THRISSUR-680 551**
- 2. RADHAKRISHNAN
S/O. RAMAN NAIR, RESIDING AT KURUPPATH HOUSE
P.O.NELLIKAD, RAMAVARMAPURAM, THRISSUR-680 631.**
- 3. THE UNITED INDIA INSURANCE COMPANY LIMITED
ROUND NORTH, THRISSUR-680 001.**
- 4. MOIDEEN HAJI, RESIDING AT KUNNATH HOUSE
VILAPPALLY, BADAKKARA 673 101**
- 5. FRANCIS, S/O. POULOSE CHITHALAN
ALLOOR HOSUE, ATHANI, WADAKKANCHERY
THRISSUR 680 582**
- 6.THE NEW INDIA ASSURANCE COMPANY LIMITED
SHAFOOR COMPLEX, OPPOSITE Y.W.C.A. KANNUR ROAD
CALICUT 673 001.**

**R3 BY ADV. SRI.A.R.GEORGE
R BY SRI.JOHN JOSEPH VETTIKAD**

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.No.936 of 2012

Dated this the 3rd day of September, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellant No.1 is the mother and the other appellants are the siblings of Sri.Suresh who died in an accident which occurred on 30.1.2004. The incident occurred when the bus in which he was travelling having registration No.KL-08/M-4624 along Mullurkara - Thrissur public road hit against another bus bearing registration No.KL-11/D-4624. He sustained very serious head injuries and was taken to the Medical College Hospital, Thrissur but succumbed to the injuries on the way.

2. It was claimed that he was doing the business in gold and silver and was earning Rs.8,000/- per month. Total compensation claimed is Rs.5 lakhs and the Tribunal has allowed Rs.2,22,500/-, which is under challenge in this appeal.

3. We heard the learned counsel for the appellants

and the learned counsel for the Insurance Company.

4. The main submission made is that the monthly income calculated at Rs.3,000/- is totally inadequate. It is also submitted that instead of correct multiplier '17' only '11' was taken as multiplier. Learned counsel also points out that the entire family was dependant on the sole income of the deceased. Therefore reduction of 50% of the amount for personal expenses cannot be said to be correct. He also sought for enhancement towards the amount granted towards funeral expenses, loss of love and affection and loss of estate.

5. We find from the award that for loss of estate no amount has been granted and for loss of love and affection only Rs.15,000/- has been granted and for funeral expenses Rs.3,000/- is the amount awarded.

6. The learned counsel for the Insurance Company while opposing the contentions of the learned counsel for the appellant submitted that herein there is not even formal evidence to show that the deceased was manging the entire

affairs of the family. It is submitted that he had two brothers and two sisters and the brothers had also attained majority. Therefore, it is submitted that this court cannot presume that the deceased Suresh alone was meeting the expenses of the family.

7. We have perused the documents as far as this aspect of the matter is concerned. The claimants have not adduced any evidence that the brothers and sisters apart from the mother were fully dependant on him and therefore his personal expenses will have to be reduced at 50%. We cannot accede to the prayer of the learned counsel for the appellants. But as regards the monthly wages are concerned, we fix it at Rs.4,000/- per month especially as he is a skilled worker. The multiplier will be 17 and we are also of the view that for loss of love and affection, funeral expenses and pain and suffering a reasonable enhancement is liable to be granted going by the facts of the case. Accordingly, we re-fix the compensation in the following manner:

Head of claim	Amount re-fixed in Rs.
Loss of dependency	4000x12x17x1/2 408000
Loss of love and affection	100000
Damages to clothings	1000
Funeral expenses	20000
Transportation	2000
Pain and suffering	10000
Loss of estate	25000
Total	5,66,000 (Rupees five lakhs sixty six thousand only)

8. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation. Out of the enhanced compensation, we allot 60% to the appellant No.1 mother and the remaining amount will be shared equally among other appellants.

9. We hold that the third respondent Insurance Company will be liable to satisfy the award and there will be a direction to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellants will be entitled for the release of

the amount.

Since the claim originally is only at Rs.5 lakhs, the appellants will have to pay court fee for the amount awarded by this Court over and above the claim which will be recovered by the Tribunal once 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/