

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 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 952 of 2012 ()

AGAINST THE AWARD IN OPMV 116/2005 of M.A.C.T., THALASSERY DATED 07-04-2011

APPELLANT(S)/PETITIONERS:

1. JYOTHI.M.
W/O. LATE MANOJ KUMAR, AGED 39 YEARS.
2. MITHUN.M,
S/O. LATE MANOJ KUMAR, 17 YEARS (MINOR)
3. RANI.M
D/O. LATE MANOJ KUMAR, 17 YEARS (MINOR)
4. SAROJINI.P.V
W/O. LATE KUNHAPPA, AGED 76 YEARS
(ALL ARE RESIDING AT KAILASAM, VALIYANNUR, P.O. VARAM
KANNUR DISTRICT)

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S)/RESPONDENT NO.3:

NATIONAL INSURANCE CO.LTD.
3RD FLOOR, UNITY BUILDING ANNEXUE, 72
MISSION ROAD, BANGALORE - 560 027.

R BY ADV. SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.952 of 2012

Dated this the 2nd day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The claimants before the Tribunal are the appellants herein. They are aggrieved by the inadequacy of compensation granted consequent on the death of late Shri Manojkumar, the husband of the first appellant. Appellants 2 and 3 are their children and the fourth appellant is his mother.

2. The accident and other aspects are not in dispute. He was riding his own cycle through Chovva-Mattannur road on 2.10.2004 at about 7 p.m. and he was hit down by a bus having Reg. No.KL 13/K 1578. He sustained serious injuries and was taken to Dhanalakshmi Hospital, Kannur and then referred to Pariyaram Medical College, but he succumbed to the injuries at 11.30 p.m.

3. The deceased was a worker in Raksha Suraksha Corps

Abhilekh Defence Security Corps Records, Mills Road, Kannur. The authorised officer was examined as P.W.2 and the salary certificate which was summoned, has been marked as Ext.X1. The total salary arrived at is Rs.7,423/-. P.W.2 further deposed that he was entitled for a special allowance of Rs.1,837/-. The Tribunal has taken Rs.7,000/- as the monthly income.

4. We heard learned counsel on both sides.

5. It is submitted by the learned counsel for the appellants that the deceased was aged 40 at the time of accident and therefore 30% increase had to be reckoned for future prospects. It is also submitted that the amount awarded towards funeral expenses, loss of consortium and loss of love and affection are inadequate. It is also submitted that for loss of estate only a sum of Rs.5,000/- was granted.

6. Learned counsel for the insurance company submitted that the income tax payable along with profession tax will have to be deducted. Since his monthly income is evident from Ext.X1 which is Rs.7,423/-, after adding 30% for future prospects, the monthly salary will come to Rs.9,650/- and yearly it will come to Rs.1,15,800/-. 10% will have to

be deducted towards income tax and Rs.1,500/- will have to be deducted for payment of profession tax which will be Rs.13,080/- and therefore the yearly amount of salary will be Rs.1,02,720/-. After deducting 1/3rd towards personal expenses, it will be Rs.68,480/- and since he was aged 40 at the time of accident, 15 is the multiplier. Therefore, the amount towards loss of dependency will be Rs.10,27,200/-. In the light of the judgment of the Apex Court in **Rajesh v. Rajbir Singh** (2013 (3) KLT 89 - SC), the appellants are entitled for enhancement in compensation towards loss of consortium, loss of love and affection, loss of estate and funeral expenses.

Accordingly, the award passed by the Tribunal is modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Transportation expenses	1000	2000
Damage to clothing	1000	1000
Pain and suffering		10000
Loss of dependency	840000	1027200
Loss of consortium	15000	100000
Loss of love and affection	30000	100000
Loss of estate	5000	50000

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Any other heads (funeral expenses)	10000	25000
Loss of love and affection to the 4 th petitioner	5000	5000
Total		13,20,200/-

(Rupees Thirteen lakhs twenty thousand and two hundred only)

The enhanced amount will carry interest at the rate of 9% per annum.

The amount will be apportioned among the appellants in the ratio provided by the Tribunal itself. The insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months. The claimants are allowed to withdraw the amount, as it is seen that the son has become a major.

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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