

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

MACA.No. 1465 of 2005 ()

AGAINST THE AWARD IN OPMV 946/2001 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, MANJERI DATED 7.6.2005

APPELLANTS/PETITIONERS: :

1. VELLUKUNNAN SOUDA, AGED 31 YEARS,
W/O. LATE CHEMMUKKAN HUSSAIN.
2. MOHAMMED SHAFEEQUE, (MINOR)
AGED 10 YEARS.
3. SHIFANA THASNI (MINOR) AGED 5 YEARS.
4. CHEMMUKKAN MOHAMMEDKUTTY,
S/O. ABDURAHIMAN, AGED 70 YEARS
(FATHER OF THE DECEASED).
5. AYISHA, W/O.MOHAMMEDKUTTY, 65 YEARS,
MOTHER OF THE DECEASED.

(APPELLANTS 1 TO 3 ARE THE WIFE AND CHILDREDN OF THE DECEASED
AND APPELLANTS 4 & 5 ARE THE PARENTS OF THE DECEASED, ALL ARE
RESIDING AT PONMALA AMSOM AND DESOM, P.O.PONMALA, MALAPPURAM DISTRICT
(APPELLANTS 2 & 3 REPRESENTED BY THEIR MOTHER GUARDIAN IST
APPELLANT.)

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS/RESPONDENTS: :

1. PAYYAPPAT SUDHEER @ SUDHEER KUMAR,
S/O. KRISHNADASAN, 'SHEEEBA NILAYAM'
NEAR CARE WELL HOSPITAL, RAMANATTUKARA
KOZHIKODE DISTRICT. (DRIVER).
2. K. KRISHNAN, S/O. KADUNGI,
KILIVAYIL (H), P.O. IRINGALLUR, VENGARA
MALAPPURAM DISTRICT.
3. UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE, COURT ROAD, P.O. MANJERI.

R3 BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.1465 of 2005

Dated this the 16th day of January 2015

JUDGMENT

Ramachandran Nair, J.,

The widow, two children and the parents of the deceased are the appellants herein. They claimed compensation consequent to the death of the bread winner of the family. The accident occurred on 11.3.2001. He was travelling in a bus from Randathani to Kozhikode. The bus hit against the back side of a car and it capsized causing injuries to him. Later he succumbed to the injuries.

2. The compensation awarded by the Tribunal is at Rs. 1,93,000/-.

3. We find from the award of the Tribunal that even though, Rs.4,500/- was claimed as monthly income, based on the employment in arecanut business, only Rs. 1250/- has been adopted for quantification.

4. As rightly pointed out by the learned counsel for the appellants meagre amounts have been granted towards funeral expenses, loss of consortium and pain and suffering. Towards loss of love and affection to the children and for loss of estate, nothing has been granted.

5. We heard the learned counsel for the appellants and learned

counsel for the Insurance Company.

6. Appellant No. 1 was examined before the Tribunal as PW1. She had given evidence in support of the monthly income and the employment. Of course there is no documentary evidence. The law is settled that in the case of monthly income where income claimed is not exorbitant, the Tribunal and the court can fix compensation by adopting a reasonable sum. In a matter like this, when the deceased was claimed to an employee of arecanut business there may not be any documentary evidence to support the income. Therefore, depending upon the situation, available, the court will have to fix a reasonable amount. We are of the view that Rs. 3,000/- can be adopted as the reasonable income. The deceased was aged only 29 at the time of death.

7. The claimants are five in number and therefore, going by the decision reported in ***Sarala Varma v. Delhi Transport Corporation (2010(2) KLT 802 (SC)*** ¼th will have to be deducted towards personal expenses and therefore, ¾th will be the contribution to the family.

8. Appellants 2 & 3 have lost their father in their early life. We are also of the view that going by the decision of the Apex Court reported in ***Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)***, the compensation towards loss of love and affection will have to be granted at Rs.1,50,000/-, for loss of consortium also we grant

amount of Rs. 1 lakh and towards funeral expenses we grant Rs.25,000/-. For pain and suffering also we grant an amount of Rs. 10000/-.

9. Nothing is granted towards loss of estate. We fix a reasonable amount of Rs. 35,000/- towards loss of estate.

Accordingly, we modify the award as follows:

Sl. No.	Heads	Amt.awarded (in Rs)	Amt. Modified (in Rs)	basis
1	Transport to hospital	1000	1000	
2	Funeral expenses	2000	25000	
3	Loss of consortium	5000	100000	
4	Pain and suffering	5000	10000	
5	Dependency	180000 (15000x12x18)	459000 (3000X12X17X3/4)	
	Loss of love and affection		150000	
	Loss of estate		35000	
	Total	193000	780000	

Accordingly, the total compensation will be Rs. 780,000/- (Rupees Seven lakh Eighty Thousand only).

10. The interest granted at the rate of 6% p.a is too low and we fix the interest at the rate of 9% p.a from the date of petition by relying upon the decision of the apex court reported in ***Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. And Anr.[(2009)4 SCC 513]***.

11. The Insurance Company is directed to deposit the entire

compensation less the amount already deposited within a period of three months.

12. Learned counsel for the appellant submitted that the Tribunal has directed that all the claimants will equally share the amount. We are of the view that the widow will have to cater the needs of the family and the education expenses of the children. Therefore, we re-fix the amount in the following manner: 50% of the award amount will be shared by first appellant and 10% of the balance will be shared by the appellants No. 4 & 5, and the remaining amount of 40% will be equally shared by the two children i.e. Appellants 2 & 3 and the amount in favour of the minor child will be deposited in a nationalised bank till he attain majority. We direct further that the court fee if any to be paid as per the compensation granted by this Court will be recovered and we permit all the appellants except the minor child to withdraw their shares. No costs.

Sd/-

T.R.RAMACHANDRAN NAIR
(JUDGE)

Sd/-

P.V.ASHA
(JUDGE)

AL/-

True copy

P.A to Judge

