

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 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

MACA.No. 1593 of 2005 ()

AGAINST THE AWARD IN OPMV 1845/1998 of M.A.C.T., KOTTAYAM DATED
20-08-2003

APPELLANTS/PETITIONERS:

1. HAMSА, VAHEEDA MANZIL,
NORTH GATE, NADUVILE VILLAGE, VAIKOM TALUK.

2. N.H.VAHEEDA, D/O.HAMSА,
VAHEEDA MANZIL, NORTH GATE, VAIKOM.

3. N.H.HARISH, S/O.HAMSА,
VAHEEDA MANZIL, NORTH GATE, VAIKOM.

4. N.H.SABITHA, D/O.HAMSА,
VAHEEDA MANZIL, NORTH GATE, VAIKOM.

BY ADV. SRI.P.M.NATESAN

RESPONDENTS/RESPONDENTS:

1. S.KRISHNAKUMAR, S/O.SANKARAN NAIR,
BHASKARA VILLA, NORTH GATE, VAIKOM.

2. ROY, PLOT NO.43,
VRINDAVAN GARDEN, PATTOM, THIRUVANANTHAPURAM.

3. NATIONAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, THRIpunITHURA, REPRESENTED
BY ITS BRANCH MANAGER.

R3 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1593 OF 2005

Dated this the 9th day of July, 2015

JUDGMENT

Jyothindranath, J.

The claimants in O.P.(MV)No.1845/1998 on the file of the Motor Accidents Claims Tribunal, Kottayam are the appellants. They approached this Court aggrieved by the quantum of compensation awarded by the Tribunal. It is the submission that even though a total amount of ₹15 lakhs was claimed, after considering the materials, the Tribunal only awarded a compensation of ₹2,46,000/-.

2. When the appeal came up for hearing, the learned counsel for the appellants submitted before us that the deceased was a P.D. Teacher in the Government service drawing a monthly salary of ₹6,009/-. It is also submitted that she was aged only 51 years at the time of the accident (date of birth 1.10.1947). It is the further submission that even though there are four claimants, the Tribunal deducted ½ of the income for calculation purpose on the ground that all

the children are major. It is also the submission that no amount has been awarded towards loss of estate and loss of consortium. It is the further submission that the compensation awarded on all counts is inadequate and an interference by this Court is warranted.

3. The learned counsel for the Insurance Company submitted before us that the accident occurred way back in 1998. It is the further submission that the children of the deceased were married and under such circumstances the Tribunal correctly deducted $\frac{1}{2}$ towards personal expenses from the income for calculation purpose and an interference by this Court is not warranted. It is also the submission that after considering the totality of the materials and facts of the case, the Tribunal awarded compensation.

4. In this case, the quantum is only under challenge. Ext.A7 is the salary certificate. The date of birth of the deceased is shown as 1.10.1947. At that point of time, the retirement age of the Government servants was 55. Going by the dictum laid down in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**, the multiplier available will be 11. But at the very same time, it is to be

remembered that the remaining period for her retirement at the time of accident was only 4 years and 4 months. Thus, it will be only just and proper to take a split multiplier in this case. It is true that after retirement, the Tribunal considered only 1/3 of the salary income of the deceased. Considering the pension scheme now existing in our State, it will be only just and proper to take $\frac{1}{2}$ of the salary for calculation purpose. From the income, towards personal expenses a deduction of $\frac{1}{4}^{\text{th}}$ is to be made. Thus, the total compensation towards loss of dependency will be ₹ 4,16,423/-, which is rounded off to ₹4,16,425/-.

5. Apart from this, the appellants are also entitled for compensation on various heads as follows :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of dependency	416425
Pain and suffering	10000
Loss of love and affection	100000
Funeral expenses	15000
Loss of consortium	75000
Loss of estate	30000
Medical expenses	2000
Transportation	2000

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Total	650425 (Rupees six lakhs fifty thousand four hundred twenty five only)

6. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The third respondent shall deposit the amount within three months of this judgment. On deposit, the appellants are permitted to withdraw the amount. From the enhanced amount with interest, 50% shall be entitled for the first appellant/first petitioner and the balance enhanced amount with interest shall be shared equally in between the appellants 2 to 4.

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

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.