

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

MACA.No. 1713 of 2005 ()

AGAINST THE AWARD IN OPMV 1156/1998 of MACT, THIRUVANANTHAPURAM
DATED 28-02-2004

APPELLANTS/PETITIONERS 1 & 8::

1. MATHEW SEBASTIAN, S/O LATE E.D.DEVASYA
ELAMTHURUTHIL HOUSE, KAKKADAN POYIL P.O.
VIA. KOODARANJI, KOZHIKODE.

2. THRESIAMMA, D/O. LATE E.D. DEVASYA
ELAMTHURUTHIL HOUSE, KAKKADAN POYIL P.O.
VIA.KOODARANJI, KOZHIKODE.

3. E.D. SEBASTIAN, S/O. LATE E.D. DEVASYA
ELAMTHURUTHIL HOUSE, KAKKADAN POYIL P.O.
VIA.KOODARANJI, KOZHIKODE.

4. MARY, D/O. LATE E.D. DEVASYA,
ELAMTHURUTHIL HOUSE, KAKKADAN POYIL P.O.
VIA. KOODARANJI, KOZHIKODE.

5. E.D. JOSE, S/O. LATE E.D. DEVASAYA
ELAMTHURUTHIL HOUSE, KAKKADAN POYIL P.O.
VIA KOODARANJI, KOZHIKODE.

6. E.D. KURUVILA, S/O. LATE E.D. DEVASYA,
ELAMTHURUTHIL HOUSE, KAKKADAN POYIL P.O.
VIA KOODARANJI, KOZHIKODE.

7. SISTER SONIA, D/O. LATE E.D. DEVASYA,
ELAMTHURUTHIL HOUSE, KAKKADAN POYIL P.O.
VIA KOODARANJI, KOZHIKODE.

8. SHINY SEBASTIAN, LATSE E.D. DEVASYA,
ELAMTHURUTHIL HOUSE, KAKKADAN POYIL P.O.
VIA KOODARANJI, KOZHIKODE.

BY ADV. SRI.JACOB ABRAHAM

MACA NO.1713/2005

RESPONDENTS/RESPONDENTS 2 TO 4

1. UDAYAN P.S., RESMI BHAVAN
PONGUMOODU, MEDICAL COLLEGE P.O.
THIRUVANANTHAPURAM-11.

2. THE MANAGER, ORIENTAL INSURANCE CO.LTD.,
ST.MARY VILLA, ULLOOR, MEDICAL COLLEGE P.O.
THIRUVANANTHAPURAM.

3. ELIAKUTTY, ELAMUTHURUTHIL VEEDU,
KAKADAN POYIL P.O., VIA KODARANJI, KOZHIKODE.

R1 BY ADV. SRI.ELVIN PETER P.J.

R2 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.1713 OF 2005

Dated this the 29th day of June, 2015

JUDGMENT

Jyothindranath, J.

This is an appeal preferred by the claimants in O.P.(MV) No.1156/1998 on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram. When the appeal came up for hearing, the learned counsel appearing for the appellants submitted before us that the deceased was congenially blind. But the deceased was a bright student who obtained 408 marks in SSLC and passed with first class. It is the further submission that he continued his studies and at the time of accident, he was a research scholar who was getting stipend @ Rs.4,000/- and more over Rs.8,000/- was paid to him annually as maintenance allowance. It is submitted that even though he was such a bright boy, the Tribunal awarded only a total compensation of Rs.2,41,000/-.

2. The learned Senior Counsel for the Insurance Company

submitted before us that the deceased was a bachelor. It is also the submission that except appellant Nos. 7 and 8, all other appellants were elder to the deceased. More over, the parents were no more and it is also pointed out that the 7th appellant is a Nun. It is further submitted that the appellants cannot be treated as dependents of the deceased and as such the Tribunal correctly awarded compensation towards loss of love and affection. It is the submission that the compensation awarded is correct in law and no interference by this Court is warranted.

3. In this case, the accident, death and policy coverage are not in dispute. There is tortious liability for the owner of the vehicle. The dispute is only in respect of quantum. It is an admitted fact that the deceased was a blind man aged 33 years who was a research scholar . Even though the learned counsel for the appellants vehemently argued that the multiplier as stated in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)** as well as contribution towards dependency has to be considered, the learned Senior Counsel for the Insurance Company opposed the same on the ground that appellants are not dependents. Thus, considering all aspects, including

the fact that the appellants cannot be treated as dependents, at the very same time it is found that the compensation awarded to the appellants are inadequate.

4. It is found that the appellants are not entitled for compensation towards loss of dependency, but the same time they are entitled for compensation towards loss of estate as well as loss of love and affection. They are also entitled for compensation towards funeral expenses, transportation expenses and pain and suffering. Considering the potential of the deceased loss of estate is to be assessed.

5. Thus the compensation is re-fixed in the following manner :

<i>Head of claim</i>	<i>Amount awarded in rupees</i>
Loss of estate	215000
Loss of love and affection	50000
Funeral expenses	10000
Transportation	5000
Pain and suffering	10000
Total	290000 (Rupees two lakhs ninety thousand only)

6. The amount will carry interest @ 9% per annum from the date of petition. The learned Senior Counsel for the Insurance Company submits that there was a delay of 108 days in filing the appeal and that period has to be excluded. At that juncture, the learned counsel for the appellants submitted that the said aspect has already been considered by this Court and the delay has been condoned and that aspect need not be reopened and considered now. There is only a delay of 108 days. The Insurance Company shall deposit the amount within three months from the date of receipt of a copy of this judgment and we permit the appellants to withdraw the amount also.

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

T.R.RAMACHANDRAN NAIR, JUDGE

SV.

K.P.JYOTHINDRANATH, JUDGE