

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 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

MACA.No. 1389 of 2012 ()

AGAINST THE AWARD IN OPMV 192/2007 of M.A.C.T.,PUNALUR DATED 30-03-2012

APPELLANT(S)/APPELLANTS:

1. SUHARA BEEVI
W/O. LATE SHAHUL HAMMED, THOTTARIKATHU VEEDU
AYILARA.P.O. AYIRANELLOOR VILLAGE, KOLLAM DISTRICT.
2. RAMLA BEEVI
D/O. LATE SHAHUL HAMEED, ISFIELD ESTATE, NEDUMPANA
KAZHUTHURUTHY.
3. KHADEEJA BEEVI,
D/O.LATE SHAHUL MANZIL, AYILARA.P.O., YEROOR
KOLLAM DISTRICT.
4. SULFATH BEEVI
D/O. LATE SHAHUL HAMEED, CHARUVILA PUTHEN VEEDU
EDAMULACKAL.P.O., ANCHAL, KOLLAM DISTRICT.
5. HAJA SHEREEF
S/O. LATE SHAHUL HAMEED, THOTTARIKATHU VEEDU
AYILARA.P.O., AYIRANELLOOR VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENT(S):

1. RAJU
VILAYIL VEEDU, ATTIPRA KULATHOOR.P.O., PIN-695583
THIRUVANANTHAPURAM DISTRICT.
2. MOHANA KUMAR
S/O. NARAYANA PILLAI, SREEVILASOM, BHARATHIPURAM.P.O.
PIN-691330, YEROOR KOLLAM DISTRICT.

3. M/S. ORIENTAL INSURANCE COMPANY LIMITED
DIVISIONAL OFFICE, NO.II, ST. MARY'S VILLA
ULLOOR, PIN-695011.

4. SULAIMAN
S/O. MYTHEEN KUNJU, KUNNUMPURATHU VEEDU, CHOZHIYACODU
KULATHUPUZHA, KOLLAM-691310.

R3 BY ADV. SRI.M.JACOB MURICKAN
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VS

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

M.A.C.A.No.1389 of 2012

Dated this the 10th day of August, 2015

JUDGMENT

T.R.Ramachandran Nair, J.

This appeal is filed by the claimant in O.P.(MV). No.192/2007 on the files of Motor Accidents Claims Tribunal, Punalur challenging the award passed by the Tribunal.

2. The facts involved in this case show that on 10.11.2006 at about 7.30 P.M., the deceased who was walking along the western road margin of Yeroor - Vilakkupara road suffered serious injuries when he was hit by a mini lorry bearing registration No.KL 2C-9948. Going by the findings in the judgment, it can be seen that he was aged 65 at the time of accident. He fell down on the road and the front wheel of the mini lorry ran over the right leg of the deceased and thereafter, he was taken to the St.John's Hospital, Anchal, but he succumbed to the injuries on the same day.

3. Heard both sides.

4. The main contention raised by the learned counsel for the appellant is that the Tribunal has awarded only a total compensation of Rs.1,32,500/- instead of Rs.4,00,000/- claimed by the appellants. The Tribunal fixed Rs.3,000/- as monthly earnings of the deceased. Since he was an agricultural labourer and was earning Rs.4,500/- at a moderate rate the same ought to have been adopted. It was also submitted that the multiplier adopted for calculation of compensation is only 5. It was further submitted that the loss of consortium, only an amount of Rs.5,000/- was granted and for loss of love and affection no amount has been granted, which is not justified, since there are more claimants who are children of the deceased.

5. The Tribunal has found his age as 65 in view of the age contained in the post mortem certificate, which we confirm. Going by the decision in **Sarala Verma v. Delhi Transport Co-operation** [2010 (2) KLT 802 (SC)] the multiplier to be adopted is 7. No amount has been

granted towards pain and sufferings of the deceased. Even though he died on the same day he would have suffered much pain. The learned counsel for the appellant heavily relied upon various judgments of Supreme Court for grant of Rs.1,00,000/- as loss of consortium to the wife. Even though he was aged 65 at the time of accident, a reasonable amount can be granted for loss of consortium. But we do not agree with the finding of the Tribunal that for loss of love and affection no amount need be granted, since the children are aged. The children have lost their father, which is liable to be compensated. For loss of estate and compensation for transportation also the Tribunal has granted only a meagre amount.

6. After considering various aspects we are of the view that the claimants are entitled for due compensation. The monthly wages are calculated at Rs.4,000/- as the same is reasonable. Accordingly, the total compensation amount is as follows.

Head of Claim	Amount awarded in Rupees
(a) Transportation expenses	Rs.2,000/-
(b) Funeral expenses	Rs.15,000/-
(c) Compensation for loss of estate	Rs.20,000/-
(d) Compensation for loss of consortium for wife	Rs.30,000/-
(e) Compensation for loss of love and affection	Rs.50,000/-
(f) Compensation for Pain and sufferings	Rs.10,000/-
(g) Compensation for the loss of dependency [4000x12x7x3/4]	Rs.2,52,000/-
Total	Rs.3,79,000/- -(Rupees three lakhs seventy nine thousand only)

7. After awarding Rs.50,000/- towards loss of love and affection, Rs.30,000/- towards loss of consortium, Rs.20,000/- towards loss of estate and Rs.15,000/- towards funeral expenses and by taking the monthly income of Rs.4,000/- and by adopting the multiplier as 7, we have re-fixed the amount. $\frac{1}{4}^{\text{th}}$ of the amount paid as wages is deducted for the personal expenses of the deceased for calculation towards loss of dependency . Accordingly the total compensation is fixed at Rs.3,79,000/--(Rupees three lakhs seventy nine thousand only), which will carry

interest at the rate of 9% per annum for the enhanced compensation. Since the insurance company is found liable by the Tribunal, there will be direction to the insurance company to deposit the amount with interest less the amount already deposited within a period of three months. 50% of the enhanced compensation is awarded to the appellant No.1 along with interest and the remaining amount will be shared along with the interest by the other appellants.

M.A.C.A.No.1389/2012 is allowed. Parties will bear their costs in the appeals.

Sd/-
T.R.RAMACHANDRAN NAIR,
JUDGE

Sd/-
K.P.JYOTHINDRANATH,
JUDGE

VS

/TRUE COPY/

PA TO JUDGE