

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

MACA.No. 1413 of 2012 ()

AGAINST THE AWARD IN OPMV 691/2007 of M.A.C.T., PALAKKAD
DATED 9.12.2011

APPELLANT(S)/PETITIONERS 1 TO 5:

1. C.P.VELAYUDHAN AGED 64 YEARS
S/O.KUNJELAN, RESIDING AT CHAKRATHUPARAMBIL HOUSE
MANNUR WEST POST, PALAKKAD, PIN-678642

2. JANAKI, AGED 59 YEARS
W/O.C.P.VELAYUDHAN, RESIDING AT -DO-, PIN-678642

3. SHEEBA AGED 42 YEARS
W/O.SUBRAMANIAN, KWA QUARTERS, MALAMPUZHA
PALAKKAD, PIN-678651

4. SHEEJA, AGED 33 YEARS
W/O.SASI, PANNIKODE HOUSE, KANNADI
PALAKKAD, PIN-678701

5. SHEELA, AGED 28 YEARS
D/O.C.P.VELAYUDHAN, CHAKRATHU PARAMBIL HOUSE, MANNUR
PALAKKAD, PIN-678642

BY ADV. SRI.SHABU SREEDHARAN

RESPONDENT(S)/RESPONDENTS 1 TO 3:

1. SHAJITHA
W/O.SULAIMAN, KUNNATH VEEDU, CHUNANGAD
OTTAPALAM TALUK-679511 (OWNER OF LORRY KL-04/Q 7596)

2. MADHUSUDHANAN,
S/O.NARAYANANKUTTY, VENGATHODI VEEDU, NAGARIPURAM
MANNUR, PALAKKAD
PIN-678642 (DRIVER OF LORRY KL-04/Q 7596)

3. NATIONAL INSURANCE CO.LTD.,
ALUVA, ERNAKULAM-
PIN-683101 (INSURER OF LORRY KL-04/Q 7596)

R3 BY ADV. SRI.A.R.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R. RAMACHANDRAN NAIR &
B. SUDHEENDRA KUMAR, JJ.**

M.A.C.A.No.1413 of 2012

Dated this the 10th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the appellants who are claimants before the Tribunal. This is a case where one late Shaji had suffered injuries in an accident which took place on 24.3.2007 at 3.15 p.m. He was riding his motor cycle bearing Reg. No.KL-9U/6017 towards Pathirippala along with one Shri Ummer as a pillion rider. The offending vehicle is a tipper lorry bearing Reg.No.KL4 Q/7596 which was owned by the first respondent. The Tribunal found in favour of the claimants and awarded compensation to the tune of Rs.3,47,000/- with interest at the rate of 7.5% per annum from 2.7.2007. The total claim was for Rs.18 Lakhs. In this appeal the appellants are seeking enhancement in compensation on various grounds.

2. We heard learned counsel for the appellants and learned counsel for the insurance company.

3. Learned counsel for the appellants submitted that the deceased was a welder and was running a welding workshop known as Ganapathy Engineering Works, Nagaripuram at Pathirappala. The monthly income claimed in the petition was Rs.10,000/-. For the reason that no documentary evidence has been produced to prove the income, the Tribunal adopted a notional income at Rs.5,000/- per month.

4. Before this Court the appellants have produced Annexure 1 along with I.A.No.1450/2015 which is a letter issued by one Shri K.Sreekumaran. According to him, he is now managing the welding workshop which was being conducted by the deceased and is getting an average net income of Rs.10,000/- to Rs.15,000/- per month after meeting all the expenses. According to the learned counsel for the appellants, the same can be safely accepted by this Court.

5. Learned counsel for the insurance company objected to the marking of the above document. We have perused the said letter. We will not be justified in assessing the income of the deceased based on a

letter issued by the person who is conducting the workshop which was being run by the deceased. It does not reflect any details regarding the income the deceased was getting from the welding workshop. Therefore, we reject the petition, I.A. No.1450/2015 for accepting the said document.

6. Learned counsel for the appellants then submitted that this Court can fix a reasonable amount, since the claim at Rs.10,000/- is not exorbitant. It is submitted that the deceased was a welder and since he was a skilled worker, he would have been able to obtain a very good income. Learned counsel for the insurance company submitted that there should have been better evidence in the matter. We are of the view that for assessing compensation in a case like this where direct evidence by way of documents may not be there regarding the monthly income, the court or tribunal can reckon a proper income by guess work also. The accident in this case occurred in the year 2007. The deceased was aged 30 at the time of accident. That he was getting a very good income, is clear. His occupation stands proved by Ext.A9

licence to conduct welding works for the relevant period, i.e. from 13.11.2006 to 31.3.2007. Even though Rs.5,000/- was adopted by the Tribunal as the monthly income, being a skilled worker and in the light of the fact that the wage structure in the State may result in better income for the deceased, we find it proper to fix Rs.7,000/- as the monthly income.

7. The deceased was a bachelor and therefore 50% of the income will have to be set apart for personal and living expenses, in the light of the decision of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** (2010 (2) KLT 802-SC). The learned counsel for the appellant raised a contention that in the light of the fact that the deceased was supporting the entire family it may be reckoned as 1/3rd of the total income. But the relaxation in such a matter is possible only if there is evidence to show that there were large number of members depending upon the deceased, which is absent in this case. Therefore, we feel it safe to adopt the method adopted in **Sarla Verma's case (supra)** to deduct 50% for personal expenses. For loss of love and

affection the Tribunal has granted an amount of Rs.10,000/- and for loss of estate what is granted is only Rs.5,000/-. An amount of Rs.2,000/- has been granted for funeral expenses and no amount has been awarded towards pain and suffering. In the light of the decision of the Apex Court in **Rajesh v.Rajbir Singh** (2013 (3) KLT 89 - SC) a sum of Rs.1 Lakh can be granted for loss of love and affection and Rs.25000/- can be granted towards funeral expenses. Since the deceased was conducting a welding workshop who would have been earning a regular income, we find it proper to fix a reasonable amount for loss of estate, viz. Rs.35,000/-. The Tribunal has adopted the multiplier by relying upon the age of the mother. In the light of the schedule fixed in **Sarla Verma's case** (supra), the correct multiplier will be 17 and we adopt the same. Therefore, the compensation for loss of dependency will come to Rs.7,14,000/-.

Accordingly, the total compensation will be refixed as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Loss of dependency	330000	714000
Loss of love and affection	10000	100000

<i>Head of claim</i>	<i>Amount awarded by the Tribunal</i>	<i>Modified award passed by this Court</i>
Loss of estate		35000
Funeral expenses	2000	25000
Pain and suffering		10000
Total		884000

(Rupees Eight Lakhs and Eighty-four Thousand only)

The Tribunal, after fixing compensation, has allowed to recover it from the owner by the insurer. This direction was issued in the light of the absence of fitness certificate for the vehicle. But in the light of the decision of this Court in **Augustine V.M. v. Ayyappankutty @ Mani and another** (2015 (2) KHC 219 - FB), absence of fitness certificate will not enable the insurance company to make a plea that the conditions of the policy have been violated. Even though learned counsel for the insurance company submitted that there is no appeal by the owner and hence this Court may not be justified in interfering with the said finding, since this Court will have to fix a just and fair compensation, we can consider the same even in the absence of appeal by the owner. Therefore, we hold that the insurance company is liable to satisfy the liability for payment of the award amount.

Therefore, the appeal is allowed directing the insurance company to deposit the entire amount of compensation and the enhanced amount of compensation will carry interest at the rate of 9% per annum from the date of petition. There will be a further direction to the insurance company to deposit the amount within a period of three months. The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(B. SUDHEENDRA KUMAR, JUDGE.)

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