

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 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

MACA.No. 1960 of 2006 ()

AGAINST THE AWARD IN OPMV 870/2000 ON THE FILE OF THE MOTOR
ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED 07-02-2006

APPELLANTS/PETITIONERS 1 TO 3 AND 5::

1. A. PRASANNA, W/O.LATE M.P.PRABHAKARAN,
AGED 41 YEARS, KAILASAM, KOZHIKKAL PARAMBA
P.O. EDAKKAD, KOZHIKODE-673005. (WIFE OF THE
DECEASED PRABHAKARAN) .

2. A.DIVYA, D/O.M.P.PRABHAKARAN,
AGED 19 YEARS, D.O.B.1989, 6-7-1989
KAILASAM, KOZHIKKAL PARAMBA, P.O. EDAKKAD
KOZHIKODE-673005.

3. A. DHANYA, D/O.M.P.PRABHAKARAN,
AGED 16 YEARS, D.O.B. 16-10-1987, KAILASAM
KOZHIKKAL PARAMBA, P.O. EDAKKAD, KOZHIKODE-673005.

4. V.K.KRISHNAN NAIR, S/O.LATE KUTTAPPU NAIR, AGED 81 YEARS,
RAILWAY PENSIONER, VALIYAKANDY,
PORAYIL HOUSE, P.O.EDAKKAD, KOZHIKODE - 673 005.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS/RESPONDENTS, 5TH PETITIONER & LRS.OF DECEASED 4TH
PETITIONER:

1. K.V. JAYARAM, S/O. CHATHUKUTTY,
EDAVANA HOUSE, MALOOR, MATTANNOORE
KANNUR DIST., (OWNER OF BUS KL-13/E-6136) .

* 2. K.V. JOSEPH, S/O. VARKEY,
AGED 39 YEARS, AAMAKKATTE HOUSE, OTTAPLAVE
KOTTIYOOR, PERAVOOR, KANNUR DISTRICT.
(DRIVER OF THE BUS KL-13/E-6136, DL.NO.387/84
BADGE NO.625/90 RENEWED UP TO 11.11.2002) [DELETED]

3. THE NEW INDIA ASSURANCE COMPANY LTD.,
IRITY ARISTO COMPLEX, MAHE-673310.
(POLICY NO.3176080386865, SL.NO.197889 VALIDITY
PERIOD 05-07-1999 TO 04-07-2000) .

4. BALAMANI AMMA, AGED 51 YEARS,
D/O. LAKSHMI KUTTY AMMA, VALIYAKANDY PORAYIL HOUSE
P.O. EDAKKAD, KOZHIKODE-673005.

5. M.P. VENUGOPAL, AGED 44 YEARS,
S/O. LAKSHMI KUTTY AMMA, VALIYAKANDY PORAYIL HOUSE
P.O. EDAKKAD, KOZHIKODE-673 005.

R,R3 BY ADV. SRI.A.C.DEVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.1960 of 2006

Dated this the 20th day of March 2015

JUDGMENT

Ramachandran Nair, J.,

This appeal is filed by the widow and children of late Sri.Prabhakaran. He died in a motor accident which occurred on 7.1.2000. The accident occurred while he was riding a motor cycle and a bus bearing registration No. KL-13 E-6136 which came from behind, knocked him down. He sustained head injury and was removed to Medical College Hospital, Kozhikode. On the next day, he succumbed to the injuries.

2. Heard both sides.

3. According to the claimants, the deceased was working as a driver in Sree Gokulam Chits and Finance Co.(P) Ltd., Kozhikode. A total amount of Rs.7 lakhs was claimed as compensation, out of which, the Tribunal granted Rs. 2,30,245/- under different heads.

4. Learned counsel for the appellant submitted that the

tribunal has reckoned the wages reflected in Ext.A11 for fixing the dependency compensation, whereas the Tribunal omitted to consider Ext.A8.

5. According to the learned counsel for the appellant, the age of the deceased was 46 at the time of the accident and he was working as part-time driver in two institutions. Ext.A8 relates to the certificate issued by the Manager, Electronic Service Centre where it is certified that he was earning a monthly income of Rs. 2000/- on an average when he was being engaged there. Ext.A11, it is stated that he was drawing Rs.2068/- on an average from Gokulam Chits and Finance. Therefore, learned counsel for the appellants submitted that actually he was drawing Rs. 4068/- which ought to have been reckoned by the Tribunal. Regarding other heads, it is submitted that the Tribunal has granted meagre amount of Rs.5,000/- towards pain and suffering, for loss of consortium to the wife, Rs.10,000/- alone was granted and Rs. 5,000/- has been granted towards loss of estate. No amount was granted for funeral expenses and for loss of love and affection in favour of minor children. For transportation expenses, nothing has been granted.

5. Evidently he was working as a driver. The accident occurred in the year 2000. Therefore it will be safe to adopt Rs.4,000/- as monthly income for fixing the compensation. Since there are 5 claimants before the tribunal, $\frac{1}{4}$ th will have to be deducted for personal expenses. Therefore, the dependency compensation will be Rs. 4,68,000/-(Rs.4000x12x13x3/4). We add a further amount of Rs. 1 lakh towards loss of consortium, Rs. 1 lakh for loss of love and affection and Rs. 25000/- for funeral expenses. For pain and suffering we grant an amount of Rs. 10,000/-. We grant an amount of Rs.1,000/- towards transportation and Rs. 15,000/- towards loss of estate. Accordingly, we modify the award as follows:

Sl. No.	Heads	Amt.awarded	Amt.modified
1	Dependency	208000	468000
2	Medical expenses	2245	2245
3	Pain and suffering	5000	10000
4	Loss of consortium	10000	100000
5	Loss of estate	5000	15000
6	Funeral expenses		25000
7	Transportation		1000
8	For loss of love and affection		100000
		230245	721245 (rounded off to Rs. 721,250/-)

6. Thus, the total compensation will be Rs.7,21,250/-
(Rupees Seven lakh Twenty One Thousand Two hundred and fifty

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only). Fifty percentage of the amount awarded will be apportioned in favour of the first appellant and the remaining amount will be equally divided among the appellants 2 and 3. The enhanced amount will carry interest at the rate of 9% p.a from the date of petition.

7. We direct the Insurance Company to deposit the amount within a period of three months. If any amount is payable as court fee, the same will be realised from the appellants i.e. from the amount deposited by the Insurance Company.

Accordingly, the appeal is allowed. The parties will suffer their costs in this appeal.

Sd/-

**T.R.RAMACHANDRAN NAIR
(JUDGE)**

**Sd/-
P.V.ASHA
(JUDGE)**

AL/-

True copy

P.A to Judge