

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

MACA.No. 27 of 2013 ()

AGAINST THE AWARD IN OPMV 346/1999 ON THE FILE FO THE MOTOR ACCIDENTS
CLAIMS TRIBUNAL, PUNALUR DATED 03-02-2004

APPELLANT/2ND PETITIONER IN THE O.P.:

SAMJITHA

D/O.KAREEM, CHEEPUVAYAL VADAKKEKKARA PUTHEN VEEDU
THAZHAMEL, ANCHAL.P.O, KOLLAM DISTRICT.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS/RESPONDENTS 1 TO 5 AND PETITIONERS 1,3 AND 4 IN THE O.P.:

* 1. P.M.JOHN

PULIMKUDIYIL, KEEZHILLAM, PERUMBAVOOR
ERNAKULAM DISTRICT, PIN-683 542.(DELETED)

2. ANSAR.K.

S/O.KASIMKUNJU, MURUKKUMMOOTIL VADAKKATHI, KUZHIYAM
PERINADU.P.O, KOLLAM. PIN-691 601.

3. M/S.NATIONAL INSURANCE COMPANY LIMITED,
DIVISIONAL OFFICE, KOLLAM, PIN-691 001.

4. JOSE @ CAPTAIN JOSE,

S/O.KURIAKOSE, VINOD NIVAS, VELIMON.P.O.
KERALAPURAM, KOLLAM, PIN-691 511.

5. M/S.ORIENTAL INSURANCE COMPANY LIMITED,
L.I.C.BUILDING, KOLLAM, PIN-691 001.

*6. KARIM,

S/O.ASANARUKUNJU
CHEEPUVAYAL VADAKKEKKARA PUTHEN VEEDU, THAZHAMEL
ANCHAL.P.O, KOLLAM DISTRICT, PIN-691 305.(DELETED)

7. M.KHALIDKUNJU,

S/O.MUHAMMED KUNJU, K.K.HOUSE, NELLIMOODU
KULATHUPUZHA, KOLLAM DISTRICT, PIN-695 524.

8. ABUSABEEVI,

D/O.BIJI UMMA, K.K.HOUSE, NELLIMOODU
KULATHUPUZHA, KOLLAM DISTRICT, PIN-695 524.

*(RESPONDENT Nos. 1 & 6 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF APPELLANT VIDE ORDER DATED 4.12.14 IN I.A. NO.3669/14 IN M.A.C.A. 27/2013) .

R5 BY ADV. SRI.VPK.PANICKER

R5 BY SRI.M.A.GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AL/-

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

M.A.C.A. No.27 of 2013

Dated this the 6th day of January 2015

JUDGMENT

Ramachandran Nair, J.,

This appeal is filed by the appellant herein who was the 2nd petitioner in O.P.(MV) No. 346/1999, aggrieved by the inadequacy of the compensation.

2. The appellant was the 2nd petitioner in the application along with her father and the parents of the deceased mother. The mother of the appellant was aged only 24 at the time of the accident. The accident had occurred while she was travelling in an autorikshaw. There were several other passengers along with her and 8 cases were tried together by the Tribunal and award has been passed.

3. As far as the quantum of compensation herein, a total amount of Rs. 1,88,000/- has been granted.

4. Learned counsel for the appellant submitted that she was a tailor by profession at the time of accident and the monthly income claimed is @ Rs.3,000/- per month. PW7 father of the deceased was examined in support of the claim. The Tribunal has fixed the monthly income only at Rs. 1,250/-, the multiplier adopted is 17 and further amounts have been granted on a lower scale viz., towards loss of consortium Rs.5,000/-, towards transportation Rs.1,000/-, towards

pain and suffering Rs.5,000/-, for loss of love and affection Rs. 5,000/- and for funeral expenses Rs.2,000/- was granted.

5. It is submitted that the approach made by the Tribunal was faulty. It is seen that the appellant has filed appeal after becoming major.

6. We heard the learned counsel for the Insurance Company also.

7. With regard to the multiplicand arrived at by the Tribunal, what we find is that the Tribunal was of the view that, to prove the monthly income, no documentary evidence has been adduced. It was claimed that the deceased was a tailor. We find on a perusal of the award that there was oral evidence in support of the claim as the claimants have examined PW7. It is settled by various decisions of the Apex Court that in respect of such engagements of victims, it will be difficult to expect dependants to produce documentary evidence and the Tribunal will have to consider whether the claim is exorbitant and if not, a reasonable amount can be fixed as monthly income of the deceased. Herein what is arrived at by the Tribunal is only Rs. 1250/-. We are of the view that Rs. 3,000/- claimed is not an exorbitant one. But the learned counsel for the Insurance Company submitted that the accident occurred in the year 1996 and therefore, this Court may have to fix a reasonable amount alone. After considering various aspects, we are of the view that Rs.2,500/- can be adopted as the

monthly income, and the same will be justified.

8. Since there are four claimants 1/3 will have to be deducted towards personal expenses of the deceased. Going by the judgment of the Supreme Court reported in ***Sarala Varma v. Delhi Transport Corporation [2010 (2) KLT 802]*** the multiplier for the age group of 24 will be 18.

9. The Tribunal has awarded amounts under other heads in the following manner: Towards transportation expenses a sum of Rs. 1,000/- and towards funeral expenses a sum of Rs. 2,000/- are granted. For pain and sufferings a sum of Rs. 5,000/- is granted.

10. We refix the compensation in the following manner: for loss of dependency Rs. 4,05,000/- ($\text{Rs. } 2,500 \times 12 \times 18 \times 1/4$). Towards loss of love and affection Rs.1,00,000/-, towards funeral expenses Rs. 25,000/-, and for pain and suffering Rs. 10,000/-. Nothing has been awarded towards loss of estate. Therefore, we grant an amount of Rs. 10,000/- towards loss of estate. Thus the total amount will be Rs. 5,46,000/-.

11. Going by the award, the father of the appellant is earmarked Rs.50,000/-. It is submitted that the father had remarried during the pendency of the application before the Tribunal. Rs.25,000/- each is awarded to the parents of the deceased. Out of the total amount of Rs.1,88,000/-, Rs.88,000/- was obtained by the appellant along with interest. Learned counsel for the appellant

submitted that the amount awarded towards loss of love and affection will have to be exclusively earmarked to the appellant and we agree. From the remaining amount we find that 2/3 can be awarded to the appellant. Accordingly, from out of the remaining amount, an amount of Rs. 1,80,000/- will be apportioned to the appellant along with interest. Rs. 1,00,000/- awarded towards loss of love and affection will be added to the said amount. Thus the appellant will be entitled to Rs. 2,80,000/- along with interest at 9% p.a from the date of petition. We find from the award that the interest is excluded from the period 24.10.2001 to 29.9.2003 which will be maintained. The 3rd respondent Insurance Company will deposit the amount within a period of three months. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
(JUDGE)
Sd/-
P.V.ASHA
(JUDGE)

AL/-

The figures '¼' occurring after the figures '18x' in the first sentence of paragraph 10 of the judgment is corrected and substituted as '¾' and the figures 'Rs.5,46,000/-' occurring in the last sentence in paragraph 10 of the judgment is corrected and substituted as '₹5,50,000/-' as per order dated 15/09/2015 in I.A.3091/2015 in M.A.C.A 27/2013.

Sd/-
Registrar (Judicial)