

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 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

MACA.No. 33 of 2013 ()

AGAINST THE AWARD IN OPMV 754/2009 of MACT PALA DATED 12-01-2012
APPELLANT(S)/PETITIONERS:

1. RAJESWARI,
W/O LATE SANJEEV RAJ, NAGAYYABHAVAN HOUSE
VANCHIMAL KARA, VANCHIMALA VILLAGE, VIANDIPERIYAR
NOW RESIDING AT NADACKAL HOUSE, POOVARANY P.O
MEENACHIL TALUK

2. ABHINAYA,
D/O SANJEEV RAJ (MINOR) REPRESENTED BY
NEXT FRIEND SMT. RAJESWARI
NAGAYYABHAVAN HOUSE, VANCHIMAL KARA
VANCHIMALA VILLAGE, VIANDIPERIYAR
NOW RESIDING AT NADACKAL HOUSE, POOVARANY P.O
MEENACHIL TALUK

3. ABHISHEK,
S/O SANJEEV RAJ (MINOR) REPRESENTED BY
NEXT FRIEND SMT. RAJESWARI
NAGAYYABHAVAN HOUSE, VANCHIMAL KARA
VANCHIMALA VILLAGE, VIANDIPERIYAR
NOW RESIDING AT NADACKAL HOUSE, POOVARANY P.O
MEENACHIL TALUK

4. ABHISHEK,
D/O SANJEEV RAJ (MINOR) REPRESENTED BY NEXT FRIEND SMT.
RAJESWARI
NAGAYYABHAVAN HOUSE, VANCHIMAL KARA
VANCHIMALA VILLAGE, VIANDIPERIYAR
NOW RESIDING AT NADACKAL HOUSE, POOVARANY P.O
MEENACHIL TALUK

5. ANDAMMAL,
W/O LATE NAGAYYA 9DIED), NAGAYYABHAVAN HOUS
E VANCHIMALA KARA, VANCHIMALA VILLAGE, VANDIPERIYAR
NOW RESIDING AT NADACKAL HOUSE, POOVARANY P.O
MEENACHIL TALUK

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENT(S)/RESPONDENTS:

1. S.GUNANEETHI,
S/O SHAKTIVEL, DOOR NO 2/176, VAKKANDAGUNDU KARA
VAKKIANDAGUNDU VILLAGE, ARAPPUKOTTAIL TALUK

VIRUDUNAGAR DISTRICT, TAMIL NADU 600001

2. K. KARUPPASWAMY,
S/O KARUPPAN, DOOR NO 2/04, VAKKANAMKUNNU P.O
THENNANGAL VILLAGE, KERIYAMPETTY TALUK
VIRUDUNAGAR DISTRICT, TAMIL NADU 600001

3. THE RELIANCE GENERAL INSURANCE CO. LTD,
RERPESENTED BY ITS BRANCH MANAGER, XL/ 3599
FOURTH FLOOR, ELIZABETH ALEXANDER MEMORIAL BUILDING
SHANMUGHAM ROAD, MARINE DRIVE, KOCHI 682031

R3 BY ADV. SRI.K.B.RAMANAND
R BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.33 of 2013

Dated this the 6th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The legal heirs of the deceased who died in an accident which took place on 14.3.2009, are the appellants herein. The deceased was driving a maruti omni bearing Reg. No.KL 6/C 8443. When it reached the place of accident, a mini bus bearing Reg. NO.TN 67/M 3650 which was coming from the opposite direction, hit against the vehicle driven by the deceased. He sustained serious injuries and succumbed to the injuries on the same day. The total compensation claimed was Rs.8 lakhs. Before the Tribunal P.W.1 was examined and Exts.A1 to A12 were marked in evidence.

2. The age of the deceased was shown as 44 in the claim petition which was later corrected as 47.

3. Before the Tribunal, it was contended that the deceased was a

businessman earning Rs.6,000/- per month. The membership certificate issued by the Kerala Vyapari Vyavasayi Ekopana Samithi was produced as Ext.A8 to show that he was conducting a stationery shop.

4. The Tribunal has adopted Rs.4,000/- as notional income per month and after deducting 1/3rd for personal expenses, the dependency compensation was quantified at Rs.4,16,000/-. Regarding the other items of damages, the following table will give the details:

<i>Head of claim</i>	<i>Amount awarded</i>
Loss of dependency	416000
Transport to hospital	2500
Damage to clothing	750
Funeral expenses	2000
Pain and suffering	7500
Loss of love and affection	5000
Loss of estate	7500
Loss of consortium	5000
Total	446250

5. Learned counsel for the appellants submitted that the monthly income claimed at Rs.6,000/- ought to have been awarded, whereas the learned counsel for the insurance company submitted that as far as business income is concerned, there is no proper evidence before the

Tribunal.

6. The appellants have no case that due to the death of the deceased the business had to be stopped. Therefore, we will have to reckon the amount representing the multiplicand by considering the loss of service of the deceased to his family. In that view of the matter, we find that the amount arrived at Rs.4,000/- by the Tribunal is reasonable. But as far as the deduction is concerned, it will be $\frac{1}{4}$ th since there were five claimants before the Tribunal.

7. We also find that that claimants will be entitled to a sum of Rs.25,000/0 towards funeral expenses and Rs.1 lakh towards loss of consortium. The Tribunal has already awarded Rs.7,500/- towards pain and suffering which we find it as reasonable. As far as compensation for loss of love and affection is concerned, there are three children. Therefore, we grant a sum of Rs.1,50,000/- towards loss of love and affection. The Tribunal has granted a sum of Rs.7,500/- only towards loss of estate which we enhance to Rs.50,000/-.

Accordingly, the award passed by the Tribunal is modified as follows:

<i>Head of claim</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Modified award passed by this Court (Rs)</i>
Loss of dependency	416000	468000
Transport to hospital	2500	2500
Damage to clothing	750	750
Funeral expenses	2000	25000
Pain and suffering	7500	7500
Loss of love and affection	5000	150000
Loss of estate	7500	50000
Loss of consortium	5000	100000
Total	446250	803750

(Rupees Eight Lakhs Three thousand seven hundred and fifty only)

The appellants will be entitled to interest at the rate of 9% per annum for the enhanced amount of compensation. The amount will be equally apportioned among the appellants. The insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months.

The appeal is allowed as above. No costs.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(P.V. ASHA, JUDGE.)

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