

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

MACA.No. 189 of 2015 ()

AGAINST THE AWARD IN OPMV 1379/2012 of III ADDL. MACT,ERNAKULAM
DATED 16-05-2012

APPELLANTS/PETITIONERS:

1. SHAHINA SANOJ AGED 28 YEARS
W/O.LATE SANOJ, PALACKAMATTOM HOUSE, THRIKKAKARA P.O.
THRIKKAKARA NORTH VILLAGE, KANAYANNOOR TALUK
ERNAKULAM DISTRICT.

2. MUHAMMED SHAN AGED 4 YEARS
S/O.LATE SANOJ
REPRESENTED BY HIS MOTHER AND NATURAL GUARDIAN SHAHINA SANOJ
W/O.LATE SANOJ, PALACKAMATTOM HOUSE, THRIKKAKARA P.O.
THRIKKAKARA NORTH VILLAGE, KANAYANNOOR TALUK
ERNAKULAM DISTRICT.

3. BADARUDHIN AGED 64 YEARS
S/O.MOIDKUNJU, PALACKAMATTOM, CHANGAMPUZHA NAGAR
NOW RESIDING AT C/O.RATHEESH MANAKAPARAMBIL ROAD
ELAMAKKARA P.O., PONEKKARA VILLAGE, KANAYANNOOR TALUK
ERNAKULAM DISTRICT (DIED)

4. RAMLATH AGED 52 YEARS
W/O.BADARUDDIN, PALACKAMATTOM, CHANGAMPUZHA NAGAR
NOW RESIDING AT C/O RATHEESH MANAKAPARAMBIL ROAD
ELAMAKKARA P.O., PONEKKARA VILLAGE, KANAYANNOOR TALUK
ERNAKULAM DISTRICT.

BY ADVS.SRI.MATHEWS K.PHILIP
SMT.T.MANASY
SRI.BINDU P.NAIR

RESPONDENTS/RESPONDENTS:

1. MUHAMMED BASHEER
S/O.IBRAHIM RAWTHER, VATTUKALATHIL (NEDUVELIL) HOUSE
ATHIRAMPUZHA P.O., ATHIRAMPUZHA VILLAGE
KOTTAYAM DISTRICT - 686 562.

2. LILLY THOMAS
W/O.N.M.THOMAS, PROPRIETRIX, M.HINDUSTAN GAS AGENCIES
ETTUMANOOR P.O. - 686 631.

3. NEW INDIA ASSURANCE COMPANY LIMITED
N.S.S.BUILDING, WEST GATE, VAIKOM
KOTTAYAM - 686 141.

R3 BY SRI.A.A.ZIYAD RAHMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR
ADMISSION ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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

M.A.C.A.No.189 OF 2015

Dated this the 2nd day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The appellants are widow, the minor son and the parents of deceased Sri. Sanoj who died in an accident which occurred on 15/03/2012. He was riding the motor cycle bearing Reg.No.KL-07 F-327 through Thrippunithura - Hill Palace road and near Hill palace junction, the accident occurred. The motor cycle was hit by a lorry bearing Reg.No. KL-05 P 1568.

2. We heard the learned counsel on both sides.

3. As against the claim of Rs.14 lakhs, the Tribunal has granted compensation of Rs.12,26,000/-.

4. The learned counsel for the appellant raised three points mainly. The first one is that the Tribunal has deducted $\frac{1}{3}$ for the personal and living expenses of the deceased which should have been $\frac{1}{4}$ going by the number of claimants, namely 4 and in the light of the

judgment in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)**. It is also submitted that for loss of love and affection Rs.15,000/- alone has been granted which is not in tune with the decisions of the Apex Court and for loss of estate also, only Rs.20,000/- has been granted. The deceased was working as an Auto Consultant.

5. The learned counsel for the Insurance Company submits that ample compensation has been granted. The deceased was aged 29 at the time of the accident. Since the claimants are four in number, $\frac{1}{4}$ will have to be deducted for personal expenses. As far as loss of love and affection is concerned, going by the judgment in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)** Rs.1,00,000/- can be granted. The compensation towards loss of estate is enhanced to Rs.40,000/- Towards loss of dependency, the appellants will be entitled to a compensation of Rs. 11,47,500/- (7500 x 12 x 17x $\frac{3}{4}$).

6. The award of the Tribunal is modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	1147500
Transportation expenses	1000
Funeral expenses	25000

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Pain and suffering	10000
Loss of consortium	100000
Loss of estate	40000
Loss of love and affection	100000
Total	1423500 (Rupees fourteen lakhs twenty three thousand five hundred only)

7. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. The compensation amount will be apportioned in tune with the direction already issued by the Tribunal in award. The appellants will pay the balance court fee, if any required, which will be recovered by the Tribunal before disbursing the amount.

The appeal is accordingly allowed. The parties will suffer their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

SV.

P.VASHA, JUDGE