

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR  
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2015/15TH MAGHA, 1936

MACA.No. 218 of 2007 ( )  
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AGAINST THE AWARD IN OPMV 137/2004 of MACT,THODUPUZHA DATED  
04-11-2005

APPELLANTS/PETITIONERS::  
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1. LEELAMMA, W/O. LATE ABRAHAM,  
VETTUKALLAMKUZHIYIL HOUSE, THOPPIPPALA P.O.,  
KOZHIMALA  
KANCHIYAR, AYYAPPANCOVIL VILLAGE.

2. JOBY, S/O. LATE ABRAHAM,  
-DO- -DO- -DO-.

3. SR.JISNA, D/O. LATE ABRAHAM,  
SALESSIAN SISTERS, AUXILIUM CENTRE, KOTTIYAM  
KOLLAM DISTRICT.

4. NISHA, D/O. LATE ABRAHAM,  
VETTUKALLAMKUZHIYIL HOUSE, THOPPIPPALA P.O.,  
KOZHIMALA  
KANCHIYAR, AYYAPPANCOVIL VILLAGE.

5. JOSEPH, S/O. LATE ABRAHAM,  
-DO- -DO- -DO-.

BY ADVS.SRI.C.M.TOMY  
SRI.MATHEW SKARIA

RESPONDENTS/RESPONDENTS:  
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1. T.T. JOHN, S/O. THOMAS,  
THAZHATHU THUNDIYIL HOUSE, NATHUKALLU, UPPUKANDAM P.O.  
IDUKKI DISTRICT.

2. THE UNITED INDIA INSURANCE CO. LTD.,  
REP. BY ITS DIVISIONAL MANAGER, MUVATTUPUZHA.

R2 BY ADV. SRI.S.ARUN RAJ

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR  
ADMISSION ON 04-02-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

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

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**M.A.C.A.No.218 OF 2007**  
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Dated this the 4<sup>th</sup> day of February, 2015

**JUDGMENT**

Ramachandran Nair, J.

The appellants are claiming enhancement of compensation now fixed by the Tribunal below.

2. The accident occurred on 15.12.2003 at about 11 a.m.. While the deceased was standing by the side of Erattayar-Kattappana road, he was knocked down by a bus bearing Reg.No.KL 8C/7938. He was treated in St.Johns Hospital, Kattappana . Later he was admitted in the Medical College Hospital, Kottayam. Because of the seriousness of the injury sustained, he died on 17.12.2003.

3. The learned counsel for the appellants submitted that the deceased was a coolie at the time of the accident and the daily wages was claimed @ ₹125/- per day. The Tribunal has adopted ₹2,000/- as the monthly earnings and fixed the compensation accordingly. It is also submitted that for damages under other heads namely loss of

consortium, loss of love and affection and funeral expenses, the Tribunal has granted meagre amounts. We find from the award that the Tribunal has granted ₹10,000/- towards loss of consortium, ₹10,000/- towards loss of love and affection, ₹5,000/- towards transportation and funeral expenses and ₹2,802/- for treatment expenses. It is seen that the Tribunal has granted ₹7,000/- towards pain and suffering of the deceased also.

4. As far as the daily earnings are concerned, since the accident is of the year 2003 and being a coolie worker, we will be justified in adopting 3,500/- as the monthly earnings. Since the claimants are five in number,  $\frac{1}{4}$  will have to be deducted for personal expenses and the multiplier going by the judgment in **Sarla Varma v. Delhi Transport Corporation ( 2010 (2 ) KLT 802 (SC)** will be 13.

We are also of the view that the claimants are entitled to enhancement under other heads. For loss of consortium, ₹1,00,000/- is granted. An amount of ₹1,50,000/- is granted towards loss of love and affection as he had four children. The Tribunal has granted only ₹5,000/- towards funeral expenses which we enhance to ₹25,000/-. As far as pain and

suffering is concerned, even though the deceased died within two days, we find that ₹15,000/- is reasonable instead of ₹7,000/- granted by the Tribunal. Towards loss of estate, nothing has been granted by the Tribunal and we award an amount of ₹10,000/- under this head. An amount of ₹3,000/- is granted towards transportation.

5. Accordingly, the appellants will be entitled to compensation in the following manner :

| <i>Head of claim</i>       | <i>Amount awarded in rupees</i>                                                                  |
|----------------------------|--------------------------------------------------------------------------------------------------|
| Treatment expenses         | 2802                                                                                             |
| Loss of consortium         | 100000                                                                                           |
| Loss of love and affection | 150000                                                                                           |
| Funeral expenses           | 25000                                                                                            |
| Pain and suffering         | 15000                                                                                            |
| Loss of estate             | 10000                                                                                            |
| Transportation             | 3000                                                                                             |
| Loss of dependency         | 409500<br>(3500 x 12 x 13 x $\frac{3}{4}$ )                                                      |
| Total                      | 715302<br>Rounded off to ₹7,15,300/-<br>(Rupees seven lakhs fifteen thousand three hundred only) |

6. The appellants will be entitled to interest @ 9% per annum

for the enhanced amount. 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 amount will be released to the appellants after recovering the court fee.

The amount will be shared in the following manner :

50% is granted to the first appellant and the balance amount will be shared equally by the other appellants.

The appeal is accordingly allowed. No costs.

**T.R.RAMACHANDRAN NAIR, JUDGE**

**P.V.ASHA, JUDGE**

SV.

