

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

MACA.No. 554 of 2007 ()

**AGAINST THE AWARD IN OP(MV) 82/2003 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
MANJERI DATED 30-11-2006**

APPELLANTS/PETITIONERS:

- 1. K.O.MATHEW, S/O JOSEPH,
KULATHINGAL HOUSE, KAKADAMPOYIL P.O.
KOZHIKODE DISTRICT.**
- 2. THRESSIAMMA, W/O K.O.MATHEW,
KULATHINGAL HOUSE, KAKADAMPOYIL P.O
KOZHIKODE DISTRICT.**
- 3. JOSEKUTTY, S/O K.O.MATHEW,
KULATHINGAL HOUSE, KAKADAMPOYIL P.O
KOZHIKODE DISTRICT.**
- 4. SEBASTIAN @ JOJO, SON OF K.O.MATHEW,
KULATHINGAL HOUSE, KAKADAMPOYIL P.O
KOZHIKODE DISTRICT.**
- 5. JINTO, W/O SAJAN,
PALATHINKAL HOUSE, ERIMAMUNDA P.O.
MALAPPURAM DISTRICT.**
- 6. JOBY, S/O K.O.MATHEW,
KULATHINGAL HOUSE, KAKADAMPOYIL P.O
KOZHIKODE DISTRICT.**
- 7. JINCY, D/O K.O.MATHEW,
KULATHINGAL HOUSE, KAKADAMPOYIL P.O
KOZHIKODE DISTRICT.**
- 8. THOMAS K.M., S/O K.O.MATHEW,
KULATHINGAL HOUSE, KAKADAMPOYIL P.O
KOZHIKODE DISTRICT.**

BY ADV. SRI.VINOD VALLIKAPPAN

MACA.No. 554 of 2007 ()

RESPONDENTS/RESPONDENTS:

- 1. MOHAMMED M.P., S/O UMMAYYA,
MADATHAMPOYIL HOUSE, MUTTANCHERRY P.O., NARIKUNNI
KOZHIKODE.**
- 2. T.T.RAFEEQUE, S/O ABDURAHIMAN,
THEKKEYTHODUKAYIL HOUSE, MUTTANCHERY P.O., NARIKKUNNI
KOZHIKODE DISTRICT.**
- 3. THE NEW INDIA ASSURANCE CO. LTD.
BRANCH OFFICE, SHAFEER COMPLEX
OPPOSITE YMCA KANNUR ROAD, KOZHIKODE.**

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.A.C.A.No.554 of 2007

Dated this the 24th day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellants are parents as well as siblings of deceased Joy Mathew who suffered serious injuries in an accident which occurred on 17.10.2002 at about 12 in the midnight. He was riding a motorcycle bearing registration No.KL-11 H 8151 from Nilambur to Kakadampoyil. It was hit by a lorry bearing registration No.KL-11 M 8236. Even though he was taken to the Government Taluk Hospital, Nilambur on the way he died. Total amount claimed is Rs.7 lakhs.

2. He was a driver and businessman by profession and aged 28 at the time of accident. Monthly income claimed was at Rs.8,000/-. But the Tribunal has taken it only at the rate of Rs.1,500/-. The multiplier taken is 11 based on the average age of mother and father. Finally Rs.1,52,500/- has been granted by the Tribunal in the

following manner:

Head of claim	Amount awarded in Rs.
Transport to hospital	1000
Funeral expenses	2000
Loss of estate	2500
Pain and suffering	5000
Loss of love and affection	10000
Loss of dependency 18000x2x1 1/3	132000
	152500

3. As he was aged 28, in the light of the decision in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]** the multiplier will have to be reckoned based on the age of the victim. The multiplier going by the said judgment is 17, which we adopt. Since it was claimed that he was a driver and a businessman it will be safe to adopt Rs.4,000/- for calculating the compensation. The compensation under the other heads also requires enhancement and we re-fix the same in the following manner:

Head of claim	Amount re-fixed in Rs.
Transport to hospital	1000
Funeral expenses	10000
Loss of estate	15000
Pain and suffering	10000
Loss of love and affection	30000
Loss of dependency	
4000x12x17x50/100	408000
Total	4,74,000 (Rupees four lakhs seventy four thousand only)

The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation. The insurance company has already been found liable to indemnify the owner.

The enhanced amount will be shared equally as already directed by the Tribunal.

There will be a direction to the Insurance Company to deposit the amount of compensation, with interest less the amount already deposited, before the Tribunal within a period of three months and we permit the claimants to

withdraw the amount after the same is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/