

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

MACA.No. 573 of 2007 ()

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AGAINST THE AWARD IN OP(MV) 1040/2000 OF IST ADDITIONAL MOTOR ACCIDENTS
CLAIMS TRIBUNAL,KOZHIKODE DATED 29.5.2006
APPELLANTS/PETITIONERS:**

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- 1. JESSY , W/O.(LATE) GIRISH KUMAR
AGED 35 YEARS, "FIELD VIEW", THONDAYAD
P.O.CHEVARAMBALAM, KOZHIKODE.**
 - 2. SHALYA, D/O (LATE) GIRISH KUMAR,
AGED 16 YEARS, (MINOR), STUDENT
"FIELD VIEW", THONDAYAD, P.O.CHEVARAMBALAM
KOZHIKODE (REPRESENTED BY 1ST APPELLANT/
PETITIONER MOTHER, NEXT FRIEND AND GUARDIAN).**
 - 3. VISHNU, S/O (LATE) GIRISH KUMAR,
AGED 7 YEARS (MINOR), "FIELD VIEW", THONDAYAD
P.O.CHEVARAMBALAM, KOZHIKODE-
(REPRESENTED BY 1ST APPELLANT/PETITIONER, MOTHER
NEXT FRIEND AND GUARDIAN).**
 - 4. SANTHA, W/O LATE SIVADASAN,
AGED 57 YEARS, (MOTHER OF LATE GIRISH KUMAR)
MARCHALIL HOUSE, MUNDUPALAM, P.O.PERUMANNA
KOZHIKODE.**

**BY ADVS.SRI.V.T.MADHAVANUNNI
SRI.K.B.SIVARAMAKRISHNAN
SRI.V.A.SATHEESH
SRI.V.JOHN SEBASTIAN RALPH**

RESPONDENTS/RESPONDENTS:

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- 1. B.M.RAJESH , S/O. CHINNAN NAYKAR
PUSHPALAYAM, MUTTATHIKANDY PARAMBA, P.O.CHALAPURAM
KOZHIKODE-2.**
 - 2. NEW INDIA ASSURANCE CO.LTD.,
TRIPURI BUILDING, EAST NADAKKAVU, KOZHIKODE-11.**

R2 BY ADV. SRI.P.G.GANAPPAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 29-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

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

M.A.C.A.No.573 of 2007

Dated this the 29th day of June, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is filed by the claimants in O.P.(M.V.) No.1040/2000 on the file of the Motor Accidents Claims Tribunal, Kozhikode.

2. When the appeal came up for hearing the learned counsel for the appellants submitted before us that the deceased was a vegetable merchant who was earning more than Rs.5,000/- per month. He was aged only 31 years and the claimants includes his wife, children and mother. It is the submission that even though he was a vegetable merchant an amount of Rs.18,000/- alone is considered as his annual income and the deduction made is also not correct as per the decision of the Apex court in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**. It is also the submission that on other heads also the compensation awarded is insufficient.

3. The counsel for the Insurance Company submitted before us that even though the vehicle involved in the accident is a jeep which was actually covered by an act only policy. But surely no contention was raised regarding this aspect. It is the submission that the accident occurred in the year 1999 and the compensation awarded is adequate considering the standard and income considered on those days and it is the submission that the multiplier which has to be adopted is 16.

4. Going by the decision of the Apex court in **Syed Sadiq v. United India Insurance Co. Ltd. [(2014) 2 SCC 735]** in the case of a vegetable vendor, who was aged 24 the monthly income was taken at Rs.6,500/- where the accident occurred in the year 2008. Surely this accident occurred in the year 1999. Proportionate deduction can be made. Thus it will be only just and proper to consider an amount Rs.3,500/- as the income of the deceased. There are four claimants. After considering the decision in Sarla Varma's case (cited supra) it is found that the deduction

towards personal expenses applicable in this case will be $\frac{1}{4}^{\text{th}}$ as the claimants are four in number. The amounts awarded towards funeral expenses, loss of consortium, loss of love and affection and loss of estate are also on lower side. Thus the compensation is re-fixed as follows:

Head of claim	Amount awarded in Rs.
Compensation for dependency	$3500 \times 12 \times 16 \times \frac{3}{4}$ 504000
Loss of consortium	100000
Loss of love and affection	100000
Funeral expenses	10000
Pain and suffering	10000
Loss of estate	30000
Transportation	2000
Total	7,56,000 (Rupees seven lakh fifty six thousand only)

Claimants are entitled for a total sum of Rs.7,56,000/-.

The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation. From the enhanced compensation a sum of Rs.50,000/- (Rupees fifty thousand only) with interest shall be given to the mother of the deceased, who is the 4th appellant herein and 50% of the balance enhanced

compensation shall be given to the first appellant, who is the wife of the deceased. The balance amount shall be shared equally in between the children of the deceased, who are appellant No. 2 & 3.

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 appellants No.1, 2 and 4 to withdraw the amount after the same is deposited by the Insurance Company. The compensation awarded to the third appellant shall be deposited till he attains majority.

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

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P.A. TO JUDGE

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