

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 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

MACA.No. 2481 of 2012 ()

AGAINST THE AWARD IN OPMV 2006/200 of MACT, ERNAKULAM DATED 14-01-2008

APPELLANTS/PETITIONERS 1 TO 3:

1. MAGI @ MAGGIE ANTONY
W/O.LATE ANTONY, KAINIKKATT HOUSE, KUMBALANGHI
COCHIN - 7
2. K.A.VINOD, @ VINOD ANTONY K.A., S/O.LATE ANTONY
KAINIKKATT HOUSE, KUMBALANGHI, COCHIN - 7
3. VIJOY @ THOMAS VIJOY K.A., S/O.LATE ANTONY,
KAINIKKATT HOUSE
KUMBALANGHI, COCHIN - 7.

BY ADVS.SRI.T.K.KOSHY
SMT.V.V.RISANI

RESPONDENTS/RESPONDENTS 1 TO 3:

1. CHRISTINA CLEETUS
S/O.T.J.CLEETUS, 37/1457, THANIKOTTU HOUSE
KUMARANASSAN ROAD, KOCHI, PIN - 682 019.
2. JOHN ALOCIOUS, S/O.M.J.ANTONY, MALOTT HOUSE,
EAST OF PRIYADARSHINI STOP, KUMBALANGHI, COCHIN - 682 007
3. THE NEW INDIA ASSURANCE CO.LTD., REPRESENTED BY ITS
REGIONAL MANAGER, REGIONAL OFFICE, KANDOMKULATHY BUILDING
M.G.ROAD, KOCHI, PIN - 682 011.

R3 BY ADV. SRI.VPK.PANICKER
R3 BY ADV. SRI.KKM.SHERIF
R3 BY ADV. SRI.LAL K.JOSEPH
R3 BY ADV. SRI.A.A.ZIYAD RAHMAN
R2 BY ADV. SRI.K.P.JOSE PIOUS
R2 BY ADV. SRI.K.ANTONY JOSEPH
R1 BY ADV. SRI.ANTONY MATHEW
R1 BY ADV. SRI.C.A.ANUPAMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2481 OF 2012

Dated this the 18th day of March, 2015

JUDGMENT

Asha, J.

The appellants are the widow and two children of deceased Antony who met with an accident on 23.04.2000 while he was travelling on a Kinetic Honda Scooter as a pillion rider. The rider lost the control of the scooter and hit against a compound wall causing serious injuries to the deceased. He succumbed to the injuries on the way to the hospital.

2. The claim petition was filed seeking compensation to the tune of ₹15 lakhs. The Tribunal awarded a sum of ₹8,15,220/- along with interest @ 7% per annum. It was claimed that the deceased was a driver of Naval Fire Service, Naval Base, Cochin drawing a monthly income of ₹6,503/-.

3. This appeal is filed seeking enhancement of compensation. It is pointed out that the Tribunal has not reckoned the income of the

deceased properly even though salary certificate was produced. It is also pointed out that the amount awarded under various heads are thoroughly inadequate.

4. We heard the learned counsel for the Insurance Company also, who vehemently opposed the claim for enhancement. The learned counsel argued that the multiplier to be adopted is 14 and that no enhancement in excess of the claim can be allowed. Since the deceased was aged 40 and there is no evidence to show that the deceased has attained 41, we adopt the multiplier applicable to the age group of 36-40 which is 15. We are adopting the salary @ ₹6503/-, as per Ext.A1 salary certificate. As the deceased was having permanent employment in the Navel Fire Service, 30% of the monthly income has to be added towards future prospects. Thus the multiplicand will be ₹8454/- (6503 + 1951). Therefore adopting the multiplier of 15 and after deducting 1/3 towards personal expenses, the compensation under the head of loss of dependency will come to ₹10,14,480(8454 x 12 x 15 x 2/3).

5. The Tribunal has awarded only a sum of ₹4,000/- towards

funeral expenses, ₹15,000/- towards loss of consortium, ₹15,000/- towards loss of love and affection. In the light of the judgments of the Apex Court in **Rajesh v.Rajbir Singh (2013 (3) KLT 89 (SC)** and **Kalpanaraj and others v. Tamil Nadu State Transport Corporation [(2015) 2 SCC 764]**, we grant an amount of ₹25,000/- towards funeral expenses , ₹1,00,000/- towards loss of love and affection, ₹ 1,00,000/- towards loss of consortium. The Tribunal has granted a sum of ₹2500/- only towards loss of estate which we enhance to ₹50,000/-.

6. Accordingly, the award of the Tribunal is modified as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Transport expenses to hospital	1000
Funeral expenses	25000
Loss of estate	50000
Loss of consortium	100000
Pain and suffering	15000
Loss of love and affection	100000
Loss of dependency	1014480

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Total	1305480 (Rupees thirteen lakhs five thousand four hundred eighty only)

7. By order dated 10/2/2015 in C.M.Appln.No.2942/2012, we had condoned the delay of 1650 days in filing the appeal on condition that if ultimately the appeal is allowed the appellant will not be entitled for interest for the period covered by the delay. We reiterate the same.

8. The enhanced amount will carry interest @9% per annum from the date of petition, subject to the above direction. 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 appeal is accordingly allowed.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.