

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 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

MACA.No. 2565 of 2012 ()

**AGAINST THE AWARD IN OP(MV) 969/2007 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL,
PALAKKAD DATED 04-02-2012**

APPELLANT(S):

**THE ORIENTAL INSURANCE COMPANY LIMITED
PALAKKAD NOW REPRESENTED BY ITS ASSISTANT MANAGER
REGIONAL OFFICE, METRO PALACE KOCHI 18**

**BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW**

RESPONDENTS/PETITIONERS:

- 1. RUGMANI
W/O.LATE GOPALAN SRUDHEESH NIVAS, KOLLAYANKADE, CHATHAMANGALAM
NENMARA PALAKKAD PIN 679 320**
- 2. THUSHARA
D/O.LATE GOPALAN, SRUDHEESH NIVAS, KOLLAYANKADE, CHATHAMANGALAM
NENMARA, PALAKKAD PIN 679 320**
- 3. THUSHEEBA
D/O.LATE GOPALAN, SRUDHEESH NIVAS, KOLLAYANKADE, CHATHAMANGALAM
NENMARA, PALAKKAD PIN 679 320**
- 4. SRUTHEESH
S/O.LATE GOPALAN, SRUDHEESH NIVAS, KOLLAYANKADE, CHATHAMANGALAM
NENMARA PALAKKAD PIN 679 320**
- 5. THAYU
W/O.LATE KUNJU SRUDHEESH NIVAS, KOLLAYANKADE, CHATHAMANGALAM
NENMARA, PALAKKAD PIN 679320**

R1 TO 5 BY ADV. SRI.JACOB SEBASTIAN

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

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

M.A.C.A.No.2565 of 2012

Dated this the 19th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is filed by the Insurance Company, aggrieved by the award in O.P.(M.V.)No.969/2007 on the file of the Motor Accidents Claims Tribunal, Palakkad.

2. The application claiming compensation was filed by the respondents 1 to 5 consequent on the death of one Sri.Gopalan on 4.9.2007 in an accident occurred when his motorcycle was hit by a bus. He was travelling in his motorcycle bearing registration No.KL-9P/6315 from Pudunagaram to Palakkad and at a place Elliyamkadu the bus bearing registration No.KL-13K/1536 hit the motorcycle. He was thrown down to the road and sustained serious injuries. He was taken to the District Hospital, Palakkad. But he succumbed to the injuries on the way.

3. He was working as an Assistant Sub Inspector of Police and was aged 51 at the time of accident. The claimants claimed a total amount of Rs.14,75,000/- and the Tribunal has granted an amount of Rs.13,43,700/-.

4. We are concerned mainly with the attack against the amount granted towards loss of dependency.

5. It is submitted by the learned Senior Counsel for the Insurance Company Sri. Mathews Jacob that the deceased was aged 51 at the time of accident and he had only four years of remaining service. But the Tribunal adopted the multiplier of 11 through out, which cannot be justified. It is submitted that even though normally split up multiplier cannot be adopted, but going by the decisions of the Apex Court in exceptional circumstances the same can be done. On the facts of this case since he will not be earning amount by way of salary for the entire period and he would be earning only the monthly pension after retirement there is no justification for adopting the multiplicand at Rs.13,350/- for the entire period.

6. Learned counsel for the respondents submitted that split multiplier cannot be adopted and hence the assessment cannot be said to be wrong. It is also submitted that towards loss of consortium only Rs.10,000/- has been granted and Rs.5,000/- only has been granted towards loss of love and affection and only an amount of Rs.5,000/- has been granted towards loss of estate and Rs.2,000/- has been granted funeral expenses. It is submitted that even though there is no appeal filed by the claimants in exercise of powers under Order 41 Rule 33 of the C.P.C. this Court can grant reasonable amount of compensation in the light of the decision of the Apex Court in **Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)]**. It is also submitted that subsequent decisions following the same could also be relied upon by this Court to fix a reasonable amount of compensation under the heads loss of consortium, loss of love and affection, loss of estate and funeral expenses. It is also submitted that no amount has been granted towards pain and sufferings of the deceased.

7. We have considered the rival submissions.

8. The age of the appellant was 51 and he was an Assistant Sub Inspector of Police. Therefore, he would have retired from service within a period of four years at the age of 55 years which was the age at the relevant time for retirement of the Government employees. The retirement being a certain event, it is an exceptional circumstance which can be considered by this Court. While fixing compensation, the Tribunal and this Court will have to consider the advantageous and disadvantageous. The said principle is clear from paragraph 45 of the judgment in **Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT 802 (SC)]**.

9. This Court has considered the relevant aspects in a recent judgment reported in **Oriental Insurance Co. Ltd. v. Valsa [2015 (1) KLT 781]**.

10. Apart from the same the monthly salary which the deceased was earning will not be available to him after attaining the age of superannuation. Since the monthly

pension normally will be 50%, we will have to reckon the said amount for the remaining period. Therefore, the monthly income fixed at Rs.13,350/- will have to be reckoned for fixing the quantum by adopting the multiplier of 4 and Rs.6,675/- has to be reckoned for adopting the amount for the remaining period of 7. By re-fixing the compensation in that manner the total amount eligible to be granted towards loss of dependency will be the following:

$$13350 \times 12 \times 4 \times \frac{3}{4} = 4,80,600/-$$

$$6675 \times 12 \times 7 \times \frac{3}{4} = 4,20,525/-$$

$$\text{Total} = 9,01,125/-$$

We also grant an amount of Rs.1 lakh each towards loss of consortium and loss of love and affection and award an amount of Rs.25,000/- towards funeral expenses, Rs.50,000/- towards loss of estate and Rs.10,000/- towards pain and sufferings of the deceased. The re-fixed amount of compensation will be the following:-

Head of claim	Amount re-fixed by this Court Rs.
Loss of dependency	13350x12x4x3/4 480600 6675x12x7x3/4 420525 Total 901125
Loss of consortium	100000
Loss of love and affection	100000
Funeral expenses	25000
Loss of estate	50000
Pain and suffering	10000
Total	11,86,125 (Rupees eleven lakhs eight six thousand one hundred and twenty five only)

The said amount will carry interest at the rate as now awarded 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. On such deposit being made, the respondents will be entitled for the release of the amount. The amount will be shared as per the ratio provided by the Tribunal.

The appeal is allowed to the above extent. 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

shg/