

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

MACA.No. 2673 of 2012 ()

AGAINST THE AWARD IN OPMV 667/2008 of M.A.C.T.,ERNAKULAM DATED
31-01-2012

APPELLANTS:

1. SUNDARAN K.V. AGED 65 YEARS
S/O KARPPAN
KOLLATHADI HOUSE
PADANILAM P.O.
KOZHIKODE DISTRICT

2. RADHA, W/O SUNDARAN K.V.
AGED 55 YEARS
KOLLATHADI HOUSE
PADANILAM P.O.
KOZHIKODE DISTRICT

BOTH ARE NOW RESIDING AT CHAKKANKOLLIL HOUSE, HOUSE NO.524
KUNNAMANGALAM, KOZHIKODE DISTRICT

BY ADV. SMT.M.R.JAYALATHA

RESPONDENT:

NATIONAL INSURANCE CO. LTD.
FIRST FLOOR, DOOR NO.16/959
SHALIMAR CHAMBERS
P.T.JACOB ROAD
THOPPUMPADY
KOCHI ERNAKULAM, KERALA
PIN 682 005 (INSURER)

R1 BY ADV. SMT. P A REZIYA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.A.C.A.No.2673 OF 2012

Dated this the 30th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the parents of deceased one Sri. late Jayajith who suffered injuries in an accident which occurred on 25.10.2007 at about 1 a.m.. He was travelling on his Bajaj Pulsar bearing Reg.No.KL 07-BG 4239 through Palarivattom-Ernakulam road and it was hit by a tempo van driven by the second respondent before the Tribunal.

2. The deceased fell down on the road and sustained serious injuries and was admitted in the Ernakulam Medical Centre Hospital and was treated there as inpatient upto 31.10.2007. He was shifted to the Medical College Hospital on the same day and he succumbed to the injuries on 2.11.2007.

3. It was claimed that he was working as Front Office Executive in Biriyani Hut, Ernakulam and was earning a monthly

income of ₹12,000/-. He was aged 25 years at the time of the accident. Going by Ext.A6, copy of the school certificate, the date of birth was 18.5.1983 and the Tribunal found that at the time of death, he had completed 24 years.

4. In the absence of clear evidence regarding monthly earnings, the Tribunal fixed the notional income at ₹4,000/- and deducted 50% towards personal expenses and by adopting the multiplier of 13 fixed the compensation for dependency at ₹3,12,000/-. For medical expenses, ₹92,621/- has been awarded.

5. The learned counsel for the appellant submitted that the monthly income fixed is too low considering the fact that the deceased was working in a restaurant. Even though there is no documentary evidence to prove his monthly income, this Court will have to consider whether the claim is exorbitant or not. The learned counsel for the Insurance Company submits that in the absence of documentary evidence, the Tribunal had no other option, but to fix the notional income at ₹4,000/- which cannot be said to be too low.

6. Having regard to the age of the deceased and the fact that

he was employed in a restaurant, we will have to fix up a proper monthly income which cannot be said to be exorbitant. True, there is no evidence to prove the payment of ₹12,000/- per month. There is no other documents to support his qualification also. Therefore, taking into consideration various aspects, we fix the monthly income of the deceased as ₹6,000/- for the purpose of fixing the compensation. As far as other items which require enhancement going by the plea of the appellants, are funeral expenses, for which only ₹ 5,000/- was awarded, loss of estate for which only ₹5,000/- was awarded and for loss of love and affection, ₹25,000/- has been granted. The learned counsel for the appellants sought support from the decision of the Apex Court in **Rajesh v. Rajbir Singh (2013 (3) KLT 89 (SC)**.

7. Being a bachelor, 50% will have to be deducted for the personal expenses of the deceased. The multiplier going by the decision of the Apex Court in **Sarla Varma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)** will be 18. Therefore, the compensation towards loss of dependency will come to ₹ 6,48,000/-

(6000 x 12 x 18 x 50%). As far as transportation is concerned, the learned counsel for the appellants submits that the dead body was taken to Kozhikode where the parents are living. We award a sum of ₹10,000/- towards ambulance charges. For loss of estate, we grant an amount of ₹35,000/- and for loss of love and affection, ₹1,00,000/- is granted.

8. Accordingly, the total compensation is recalculated as follows :

<i>Head of claim</i>	<i>Amount Awarded in rupees</i>
Loss of dependency	648000
Transportation	10000
Attendant expenses	2000
Medical expenses	92621
Damage to clothing	500
Funeral expenses	25000
Loss of estate	35000
Pain and suffering	25000
Loss of love and affection	100000
Total	938121
	Rounded off to ₹9,38,100/- (Rupees nine lakhs thirty eight thousand one hundred only)

9. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The amount will be shared equally by the appellants. 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 and the claimants are permitted to withdraw the amount also. The parties will suffer their costs in this appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

P.V.ASHA, JUDGE

SV.