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 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

MACA.No. 822 of 2007 ( )

(AGAINST THE AWARD IN OP(MV).NO. 1548/2003 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOTTAYAM DATED 29-04-2006)

APPELLANTS/PETITIONERS:
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1. **BANCHIYAMMA PUNNUS.K @ BENCHIAMMA ALEXANDER.**

2. **ARUN K.ALEX.**

3. **ASHA K.ALEX,**
   APPELLANTS 1 TO 3 ARE RESIDING AT KANJICKAL HOUSE,
   VAIKOM P.O.

4. **THANKAMMA KUNCHERIA,**
   RESIDING AT KOYIKKAL PUTHENPURA HOUSE, KANNODI P.O.

   BY ADVS. SRI.T.C.SURESH MENON
   SRI.JIBU P THOMAS
   SRI.SUNIL J.CHAKKALACKAL

RESPONDENT(S)/RESPONDENTS:
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1. **JOMON, S/O. MATHEW,**
   RESIDING AT KULATHIL HOUSE, NEENDOOR P.O.

2. **JOMON MATHEW, S/O. MATHEW,**
   RESIDING AT KULATHIL HOUSE, KAIPUZHA, NEENDOOR P.O

3. **M.MANI,**
   RESIDING AT VATTAMUKAL HOUSE, THELLAKOM P.O.

4. **THE NEW INDIA ASSURANCE COMPANY LIMITED.,**
   KOTTAYAM.

   R1 BY ADV. SRI.M.J.THOMAS
   R4 BY ADV. SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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T.R.RAMACHANDRAN NAIR &
P.V.ASHA, JJ.
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M.A.C.A No.822 of 2007
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Dated this the 23rd day of March, 2015

<u>JUDGMENT</u>

<u>Ramachandran Nair, J</u>

The appellants are the claimants in the Tribunal, who are the wife and children of deceased Sri.Alexander. The accident occurred on 01.04.2003. He was riding his motor cycle through Vaikom private bus stand towards Valiyakavala (a junction) near the Sub Regional Transport Office. The offending vehicle, a jeep bearing registration No.KRQ 3683 collided with the motor cycle. He was admitted in the Matha Hospital, Thellakam and was treated as an inpatient till 07.04.2003. In the meanwhile his right leg was amputated on 04.04.2003. Later, he was referred to the Amrita Institute of Medical Science and Research Centre, Ernakulam where he was admitted on 07.04.2003 but he died on 09.04.2003 due to head injuries and multiple fractures sustained.

2. As against the total claim of Rs.15,26,000/- the Tribunal awarded Rs.6,03,355/-.

3. We heard learned counsel for the appellants Sri.T.C.Suresh Menon and learned counsel for the insurance company Sri.Lal George.

4. The first submission made is with regard to the adoption of monthly income at Rs.5,000/- only. It is submitted that he was running a business by name Kanjickal Cycles at Vaikom and was getting a monthly income of Rs.10,000/-. Exts.A17 to A26 are the income tax assessment records for the respective years from 1994 to 1995. The details have been discussed by the Tribunal in paragraph 10 of the award. For the year 2002-2003 the income from business was Rs.60,609/-. The Tribunal fixed the monthly income at Rs.5,000/-. Therefore, considering the income for the said year we find the same is the correct one. But ¼ will have to be deducted for personal expenses.

5. The next item is the medical expenses and the Tribunal granted an amount of Rs.75,900/-. The additional claim to the tune of Rs.41,115/- was not allowed on the ground that Ext.A28 show that there was a medi claim policy in favour of the deceased. It is submitted by the learned counsel for the appellant that in the light of the judgment of this Court in **National Insurance Company Ltd. v Biju Mon (2011(2) KLT 20)** the said amount cannot be

deducted from the compensation. The learned counsel Sri.Lal George submitted that the matter has now been referred to a Full Bench. As per the law laid down by the above quoted decision and prevailing now, we grant Rs.41,115/- also towards medical expenses.

6. The learned counsel for the appellant submitted that for funeral expenses, loss of consortium and loss of love and affection, the amount awarded will have to be recomputed in the light of the judgment of the Apex Court in **Rajesh v Rajbir Singh (2013(3) KLT 89(SC))**. Towards loss of estate Rs.20,000/- has been granted. But the Tribunal has granted an amount of Rs.10,000/- toward loss of expectation. Such a head is not available as far as the case of death is concerned. Therefore, we have to reckon the same and fix a proper amount towards the loss of estate. The total amount of compensation will come to Rs.9,85,015.

We recompute the compensation in the following manner:

Sl. No.	Head of claim	Amount Awarded by the Tribunal (in Rupees)	Amount awarded in this Court (in Rupees)
1	Loss of dependency	439956	585000
2	Medical expense	75900	117015
3	By-stander's expenses	3000	3000
4	Pain and Suffering	20000	20000
5	Loss of consortium	15000	100000

Sl. No.	Head of claim	Amount Awarded by the Tribunal (in Rupees)	Amount awarded in this Court (in Rupees)
6	Loss of love and affection	15000	100000
7	Loss of estate	20000	35000
8	Loss of earning	1499	
9	Loss of expectation	10000	
10	Transportation expenses	3000	
11	Funeral expenses	0	25000
	Total	Rs.6,03,355/-	Rs.9,85,015 /-

The appeal is accordingly allowed. The enhanced amount will carry interest at the rate of 9% per annum and we direct the insurance company to deposit the amount awarded by us less the amount already deposited before the Tribunal within a period of three months. The claimants are permitted to withdraw the amount in tune with the ratio fixed by the Tribunal. There will be no order as to costs in the appeal.

Sd/-
T.R.RAMACHANDRAN NAIR (JUDGE)

Sd/-
P.V.ASHA (JUDGE)

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